Supreme Court, U.S.
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No. 97-581

In The Supreme Court Of The United States

OCTOBER TERM, 1997

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE,
Petitioner

vs.

KEITH M. SCOTT,
Respondent

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

JOINT APPENDIX

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Petition for Certiorari filed September 30, 1997
Certiorari Granted November 26, 1997

152 pp

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RELEVANT DOCKET ENTRIES

Date	Proceeding
	Commonwealth Court of Pennsylvania
12/08/94	Petition for Review filed
3/06/95	Petitioner/Appellant's Brief filed
3/06/95	Appellant's Reproduced Record filed
4/05/95	Respondent/Appellee's Brief filed
4/19/95	Reply Brief filed
11/30/95	Opinion Filed
	Supreme Court of Pennsylvania
1/02/96	Petition for Allowance of Appeal filed
5/15/96	Petition for Allowance of Appeal granted
6/27/96	Reproduced Record filed
7/15/96	Brief for Appellant filed
8/14/96	Brief for Appellee filed
8/28/96	Reply Brief for Appellant filed
7/03/97	Judgment entered

Pennsylvania Board of Probation and Parole

ORDER TO RELEASE ON PAROLE/REPAROLE

The Pennsylvania Board of Probation and Parole hereby grants parole/reparole to the prisoner named and on the sentences described below. It further ordered that he/she be released on the date indicated below, subject to Board approval of a satisfactory plan and to the Conditions Covering Parole/Reparole (PBPP-11) and upon condition that he/she commits no misconducts or crimes, and that no evidence of past crimes or mental illness, previously undiscovered, comes to light.

Name of Prisoner	ParNo.	Inst.No.	Authorized Date of Release
KEITH M. SCOTT	4488X	BV1645	*September 1, 1993

Place of Confinement	Date of Return (Reparole Cases Only)
STATE CORRECTIONAL INSTITUTION DALLAS	

County	Date of Sentence(s)	Tp	Term(s)/Indictment Number(s)	OTN(s)	Offense(s)/ Charges(s)
MONROE	04/02/92	CC	CP 830000398		MURDER 3

Judge(s)	Term(s) of Sentence(s)		Expiration Dates	
			Minimum	Maximum
RONALD E. VICAN	10YR	20YR	03/31/93	03/31/03

*TO THE INTENSIVE SUPERVISION DIVERSION RELEASE PROGRAM PROVIDING THERE ARE NO MISCONDUCTS AND YOU REMAIN INVOLVED IN REQUIRED PROGRAMS, ALSO SUBJECT TO AN APPROVED PLAN.

Agent Gallo
Type Report 15R
Late Assigned 9-2-93
Date Due 10-15-93
Date Extended /s/

Signed this *25th* day of *August, 1993* at Harrisburg, PA

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

/s/ Allen Castor
Board Chairman
SEAL

Actual Date of Release September 1, 1993

CONDITIONS GOVERNING PAROLE/REPAROLE

To: Keith M. Scott Parole No. 4488-X

1. Report in person or in writing within 48 hours to the district court office or sub-office listed below, and do not leave that district without prior written permission of the parole supervision staff.

   SCRANTON DISTRICT OFFICE
   100 Samters Building
   101 Penn Avenue
   Scranton, PA 18503

2. Your approved residence is listed below and may not be changed without the written permission of the parole supervision staff.

   RD #1, Box 307-A
   307 Rena Drive & Long Mountain Road
   Effort, PA
   c/o Patricia McDaniel, mother

3. Maintain regular contact with the parole supervision staff by:
   a. reporting regularly as instructed and following any written instructions of the Board or the parole supervision staff.
   b. notifying the parole supervision staff within 72 hours of: (1) your arrest; or (2) your receipt of a summons or citation for an offense punishable by imprisonment upon conviction; and
   c. notifying the parole supervision staff within 72 hours of any change in status, including, but not limited to, employment, on-the-job training, and education.

4. Comply with all municipal, county, state and Federal criminal laws, as well as the provisions of the Vehicle Code (75 Pa.C.S. §101 et seq.), and the Liquor Code (47 P.S. §1-101 et. seq.)

5. You shall:
   a. abstain from the unlawful possession or sale of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device, and Cosmetic Act (35 P.S. §780-101 et seq.) without a valid prescription;
   b. refrain from owning or possessing any firearms or other weapons; and
   c. refrain from any assaultive behavior.

6. You shall pay fines, costs, and restitution imposed on you by the sentencing court. You shall establish with appropriate county authorities within thirty (30) days of your release from prison a payment schedule for the fines, costs and restitution owed for those cases for which you are now on state parole. Thereafter, you shall:
   a. pay these obligations according to the established payment schedule or as ordered by the court;
   b. provide proof of such payment to parole supervision staff; and
   c. keep the parole supervision staff and the court informed of any changes in your financial ability to pay fines, costs and restitution.

7. You shall comply with the special conditions listed on page 2 imposed by the Board and with special conditions imposed by the parole supervision staff.

Additionally, should problems arise, or questions occur concerning the conditions of your parole/reparole, consult with the parole supervision staff, and they will help you in the interpretation of the Conditions of

Parole/Reparole.

If you are arrested on new criminal charges, the Board has the authority to lodge a detainer against you which will prevent your release from custody, pending disposition of those charges, even though you may have posted bail or been released on your own recognizance from those charges.

If you violate a condition of your parole/reparole and, after the appropriate hearing(s), the Board decides that you are in violation of a condition of your parole/reparole you may be recommitted to prison for such time as may be specified by the Board.

If you are convicted of a crime committed while on parole/reparole, the Board has the authority, after an appropriate hearing, to recommit you to serve the balance of the sentence or sentences which you were serving when paroled/reparoled, with no credit for time at liberty on parole.

If you think that any of your rights have been violated as a result of your parole supervision, you may submit a timely complaint in writing, first to the district director of the district office through which you are being supervised. If your complaint is not resolved to your satisfaction, you may then submit your complaint in writing to the Pennsylvania Board of Probation and Parole, Director of Supervision, P.O. Box 1661, Harrisburg, Pennsylvania 17105-1661.

In consideration of being granted the privilege of parole/reparole by the Pennsylvania Board of Probation and Parole, I hereby agree that:

If I am ever charged with a parole violation arising out of my conduct while in a jurisdiction other than the Commonwealth of Pennsylvania, the revocation of my parole for that violation may be based solely on documentary evidence and I hereby waive any right to confront or cross-examine any person who prepared any such documentary evidence or who supplied information used in its preparation;

I expressly waive extradition to the Commonwealth of Pennsylvania from any jurisdiction in or outside of the United States, where I may be found, and I shall not contest any effort by any jurisdiction to return me to the United States or to the Commonwealth of Pennsylvania; and

I expressly consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and Parole. Any items, in the possession of which constitutes a violation of parole/reparole shall be subject to seizure, and may be used as evidence in the parole revocation process.

To: KEITH M. SCOTT Parole No. 4488X Inst. No. BV-1645

SPECIAL CONDITIONS

YOU MUST ABIDE BY ALL OF THE SUPERVISION REQUIREMENTS IN THE INTENSIVE SUPERVISION DIVERSION RELEASE PROGRAM.
OUT-PATIENT DRUG, ALCOHOL, AND MENTAL HEALTH TREATMENT IS A SPECIAL CONDITION OF YOUR PAROLE SUPERVISION UNTIL THE TREATMENT SOURCE AND/OR PAROLE SUPERVISION STAFF DETERMINE IT IS NO LONGER NECESSARY. YOU WILL BE REQUIRED TO SIGN THE APPROPRIATE RELEASE FORM FOR CONFIDENTIAL INFORMATION.
YOU MUST SUBMIT TO URINALYSIS TESTING.
YOU MUST NOT CONSUME ALCOHOL UNDER ANY CONDITION OR FOR ANY REASON.
YOU MUST NOT ENTER ESTABLISHMENTS THAT SELL OR DISPENSE ALCOHOL.
YOU MUST TAKE PSYCHOTROPIC MEDICATION IF PRESCRIBED BY YOUR DOCTOR.
YOU MUST NOT CONTACT OR ASSOCIATE WITH THE VICTIMS OR THEIR FAMILY MEMBERS FOR ANY REASON.
YOU SHALL PAY A MONTHLY SUPERVISION FEE OF $25.00 TO THE PAROLE BOARD WHEN UNDER SUPERVISION WITHIN THE COMMONWEALTH OF PENNSYLVANIA (ACT 35 OF 1991).

/s/ Keith Scott	/s/
Signature of Parolee	Witness
8/31/93	
Date	Witness

Note: If signed by mark, there must be two witnesses to the execution of the instrument.

COMMONWEALTH OF PENNSYLVANIA
BOARD OF PROBATION AND PAROLE

WARRANT TO COMMIT AND DETAIN 4-5370

Date February 4, 1994

To the Superintendent, Warden, or other authorized representative of any Detention Facility or State Correctional Institution in the Commonwealth of Pennsylvania:

By virtue of the authority delegated to me by the Pennsylvania Board of Probation and Parole, you are hereby authorized and directed to commit and detain for violation of parole/~~probation~~ Keith M. Scott, Parole No. 4488-X, paroled on 9-1-93 from SCI-Dallas, Institution No. BV-1645 subject to further order of the Board.

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

By:

/s/ Michael C. Baker
District Director
Michael C. Baker

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

NOTICE OF CHARGES AND HEARING

Name Keith M. Scott Date February 4, 1994

Parole No. 4488-X Photo No. _____ PCP No. _____

You are charged with the following: Technical Parole Violations

1. Violation of Condition No. 5b: YOU SHALL REFRAIN FROM OWNING OR POSSESSING ANY FIREARMS OR OTHER WEAPONS. (3 counts)

a. On 9-4-93, you were in possession of a 22 Magnum revolver pistol.

b. During September of 1993, you were in possession of a 10 millimeter Glock handgun.

c. On 2-4-94, the following weapons were confiscated from your approved residence: one (1) Mossberg 12 gauge pump shotgun, serial no. G878391; one (1) Glenfield 12 gauge bolt action shotgun, serial no. 71357747; one (1) Stevens 12 gauge single shotgun, no serial number; one (1) Harrington-Richardson 12 gauge single shotgun, serial no. 918060; one (1) Glenfield .22 caliber semi-automatic, Model 60, serial no. 23506068, and one (1) Green Camo-Colored Compound bow plus three arrows.

2. Violation of Condition No. 5c: YOU SHALL REFRAIN FROM ANY ASSAULTIVE BEHAVIOR.

During November of 1993, you threatened a co-worker, Gerald Thomas, by approaching Mr. Thomas and stating "I am going to fuckin kill you" numerous times.

3. Violation of Condition No. 7, Special Condition: YOU MUST NOT CONSUME ALCOHOL UNDER ANY CONDITION OR FOR ANY REASON. (2 counts)

a. On or about 9-2-93, you consumed Zima Clear Malt alcoholic beverages.

b. On or about 1-18-94, you consumed Southern Comfort alcoholic beverages.

As a result, a Preliminary hearing will be held. Your rights for this hearing are indicated on the reverse side.

Hearing Date and Time February 18, 1994

Public Defender: 10:00 a.m.
Monroe County Court House
Stroudsburg, PA 18360 Location: Monroe County Correctional Facility

cc: Public Defender
Monroe CCF /s/ Donald J. Week for
Hearing Examiner Judge Signature
Agent
File Floyd J. Gallo, Parole Agent II
Title

RIGHTS AT ALL BOARD HEARINGS

You have the right to: (1) speak; (2) have voluntary witnesses appear on your behalf; and (3) present affidavits and other evidence. You have the right to be represented by retained counsel. On the reverse side are listed the name and address of the public defender of the county in which you are incarcerated. You may request a continuance of the hearing for good cause. The Board will send notice of its determination either to you or to counsel if you were represented at the hearing.

PRELIMINARY HEARING RIGHTS

The Board has ordered your detention as a result of the technical parole violation(s) charged on the reverse side and has scheduled a preliminary hearing before an examiner to determine whether there is probable cause to believe that you committed the violation(s). If the examiner finds probable cause, the Board may schedule a violation hearing to determine whether you should be recommitted as a technical violator.

VIOLATION HEARING RIGHTS

The Board has scheduled a violation hearing to determine whether you should be recommitted as a technical violator because of the violation(s) charged on the reverse side. You have a right to be heard by a panel.

You have a right to representation by free counsel at this hearing if you are unable to afford counsel.

DETENTION HEARING RIGHTS

The Board has ordered your detention as the result of the new criminal charge(s) listed on the reverse side, and has scheduled a detention hearing before an examiner to determine whether you should be detained pending disposition of the charge(s).

REVOCATION HEARING RIGHTS

The Board has scheduled a revocation hearing to determine whether you should be recommitted as a convicted violator because of the conviction(s) charged on the reverse side. You have a right to be heard by a panel.

You have a right to representation by free counsel at this hearing if you are unable to afford counsel.

PENNSYLVANIA BOARD OF PROBATION AND PAROLE
NOTICE OF CHARGES AND HEARING

Name Keith M. Scott Date March 23, 1994

Parole No. 4488-X Photo No. _____ PCP No._____

You are charged with the following:

TECHNICAL PAROLE VIOLATIONS!

VIOLATION OF CONDITION NO. 5B: YOU SHALL REFRAIN FROM OWNING OR POSSESSING ANY FIREARMS OR OTHER WEAPONS (THREE COUNTS).

A) On 9/4/93, you were in possession of a 22 Magnum revolver pistol.

B) During September 1993, you were in possession of a 10 Millimeter Glock handgun.

C) On 2/4/94, the following weapons were confiscated from your approved residence: One (1) Mossberg 12 gauge pump shotgun, serial no. G878391; one (1) Glenfield 12 gauge bolt action shotgun, serial no. 71357747; one (1) Stevens 12 gauge single shotgun, serial no. 918060; one (1) Glenfield .22 caliber semi-automatic, Model 60, serial no. 23506068, and one (1) Green Camo-Colored Compound bow plus three arrows.

Violation of Condition #5C: YOU SHALL REFRAIN FROM ASSAULTIVE BEHAVIOR.

During November of 1993, you threatened a co-worker, Gerald Thomas, by approaching Mr. Thomas and stating "I am going to fuckin kill you" numerous times.

VIOLATION OF CONDITION NO. 7, SPECIAL CONDITION: YOU MUST NOT CONSUME ALCOHOL UNDER ANY CONDITION OR FOR ANY REASON (TWO COUNTS).

A) On or about 09/02/93, you consumed Zima Clear Malt alcoholic beverages.

B) On or about 01/18/94, you consumed Southern Comfort alcoholic beverages.

As a result, a VIOLATION hearing will be held. Your rights for this hearing are indicated on the reverse side.

Hearing Date and Time: March 30, 1994

9:30 a.m.

Public Defender:
Luzerne County Public Defender's Office
Court House Annex
Wilkes-Barre, PA 18702

Location: Dallas State Correctional Institution
Drawer K, Follies Road
Dallas, PA 18612

cc: Parole Agent Gallo
Joseph Gober, IPR
Luzerne Co. Public Defender
Hearing Examiner's file

/s/ John G. Engle, Jr./ah
Signature
John G. Engle, Jr.
Regional Hearing Examiner
Title

RIGHTS AT ALL BOARD HEARINGS

You have the right to: (1) speak; (2) have voluntary witnesses appear on your behalf; and (3) present affidavits and other evidence. You have the right to be represented by retained counsel. On the reverse side are listed the name and address of the public defender of the county in which you are incarcerated. You may request a continuance of the hearing for good cause. The Board will send notice of its determination either to you or to counsel if you were represented at the hearing.

PRELIMINARY HEARING RIGHTS

The Board has ordered your detention as a result of the technical parole violation(s) charged on the reverse side and has scheduled a preliminary hearing before an examiner to determine whether there is probable cause to believe that you committed the violation(s). If the examiner finds probable cause, the Board may schedule a violation hearing to determine whether you should be recommitted as a technical violator.

VIOLATION HEARING RIGHTS

The Board has scheduled a violation hearing to determine whether you should be recommitted as a technical violator because of the violation(s) charged on the reverse side. You have a right to be heard by a panel.

You have a right to representation by free counsel at this hearing if you are unable to afford counsel.

DETENTION HEARING RIGHTS

The Board has ordered your detention as the result of the new criminal charge(s) listed on the reverse side, and has scheduled a detention hearing before an examiner to determine whether you should be detained pending disposition of the charge(s).

REVOCATION HEARING RIGHTS

The Board has scheduled a revocation hearing to determine whether you should be recommitted as a convicted violator because of the conviction(s) charged on the reverse side. You have a right to be heard by a panel.

You have a right to representation by free counsel at this hearing if you are unable to afford counsel.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA BOARD OF PROBATION & PAROLE

	:	PAROLE NO. 4488-X
KEITH SCOTT	:	
Parolee	:	

* * *

Before: John Engle
Hearing Examiner

Hearing Date: March 30, 1994

Location: SCI - Dallas

APPEARANCES:

Keith Scott
Parolee

George Westerfield
Counsel

Floyd Gallo
Parole Agent

Witnesses for Parole Agent:

Eric Hahn
Ray Opperlee

Larry Mundro
Loren Dunham

Witnesses for Defense:

John McDaniel
Donald Byrnes

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PROCEEDINGS

HEARING EXAMINER ENGLE: I'd like the record to show that this is a scheduled violation hearing in the case of Keith Scott, S-c-o-t-t. Mr. Scott's parole number is 4488-X. Today is March the 30th, 1994, at the State Correctional Institution at Dallas. Persons present for this hearing in addition to Mr. Scott are his attorney, George Westerfield, parole agent is Floyd Gallo, and the Hearing Examiner is John Engle. There are witnesses to be called in this case, both by the State and by Defense. Those witnesses will be introduced at the time they're brought to the hearing room to testify. I'd like the record to show also that the State and Defense witnesses have been sequestered for purposes of this hearing. Mr. Scott, a violation hearing is the final hearing you'll have with regard to these allegations before the Board makes a final Decision. Since it is the final hearing, do you understand that you have the right to have this matter heard personally by two people commonly called a panel hearing? Do you know what a panel hearing is, Mr. Scott?

MR. SCOTT: Yes, sir.

HEARING EXAMINER ENGLE: Okay. Do you wish to have a panel hearing?

MR. SCOTT: No, sir.

HEARING EXAMINER ENGLE: It appears, Mr. Scott, that you may on February the 23rd, 1994, given preliminary

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HEARING EXAMINER ENGLE: (cont'd) indication of your intent to waive a panel hearing. I ask you now is this your signature on this waiver of panel hearing?

MR. SCOTT: Yes, sir.

HEARING EXAMINER ENGLE: I'm going to reaffirm your waiver, and we'll go forward with the final hearing today. Any questions about the wavier, Mr. Scott?

MR. SCOTT: No, sir.

HEARING EXAMINER ENGLE: Mr. Scott and Mr. Gallo, you may remain seated. Would you raise your right hands please? Do you swear any testimony you give at this violation hearing to be the truth, the whole truth, and nothing but the truth so help you?

MR. SCOTT: Yes, sir.

MR. GALLO: Yes.

HEARING EXAMINER ENGLE: Thank you. I'm required, Mr. Scott, to take official notice of some of the information contained in the heading of this arrest report that's the document that's before you now. I'll point out the information to which I'm going to take notice as I read it into the record. This document indicates that Keith Scott is currently serving a ten (10) year to twenty (20) year sentence from Monroe County, Pennsylvania, for the offense of Murder, Third Degree. The current maximum expiration date on this sentence stands at March the 31st in the year 2003. Have you any questions about

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HEARING EXAMINER ENGLE: (cont'd) any of that information, Mr. Scott?

MR. SCOTT: No, sir.

HEARING EXAMINER ENGLE: One other bit of information that I have available here is a copy of the Release Order on that ten (10) to twenty (20) year sentence along with the attending conditions of parole for parole supervision under that sentence. This Release Order indicates a release on parole date of September 1, 1993. -Is that

date correct?

MR. SCOTT: Yes, sir.

HEARING EXAMINER ENGLE: Now, you had a question about that?

MR. SCOTT: I was just interested in seeing the conditions of parole.

HEARING EXAMINER ENGLE: Sure.

MR. SCOTT: Could I ask a question please?

HEARING EXAMINER ENGLE: Sure.

MR. SCOTT: The definition of intensive supervision?

HEARING EXAMINER ENGLE: Okay. Let's go back to that. Let me read this document, and we'll ask Mr. Gallo to respond to that. For the record, these are conditions that Mr. Gallo [*sic*] currently has as he's still on parole under the ten (10) to twenty (20) year sentence. And his question is with regard to the first condition, I believe, which reads here, "You must

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HEARING EXAMINER ENGLE: (cont'd) abide by all supervision requirements in the intensive supervision diversification release program." And your question is what, Mr. Scott? What are the

requirements?

MR. SCOTT: What exactly is intensive supervision? Like the amount?

MR. GALLO: Well, I would say at least twice a month or more I would take a urinalysis on him, and I would make sure that he was going to his various programs, mental health, and stuff like that. And I mostly would see him as much as I could possibly see him.

HEARING EXAMINER ENGLE: So is it fair to say, Mr. Gallo, that by definition, the intensive supervision requirements - - under those requirements a parole agent is obliged to see a parolee as frequently as possible?

MR. GALLO: As possible.

HEARING EXAMINER ENGLE: Is that the idea of the program?

MR. GALLO: Depending upon the caseload and, you know, the circumstances and all, and I would see Mr. Scott at least twice a month.

HEARING EXAMINER ENGLE: Is there a minimum requirement? In other words, are you required, Mr. Gallo, to see Mr.

Scott. . .

MR. GALLO: Yes. He was considered a maximum

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MR. GALLO: (cont'd) case, and I was required to see him twice a month; plus I was required or obliged to follow up that visitations with collateral contact such as. . .

HEARING EXAMINER ENGLE: Collateral contacts meaning?

MR. GALLO: Police department, people that knew him in the neighborhood or the community and the mental health (INAUDIBLE).

HEARING EXAMINER ENGLE: Does that answer your question, Mr. Scott?

MR. SCOTT: I just have one question concerning urinalysis.

HEARING EXAMINER ENGLE: Sure, go ahead.

MR. SCOTT: Is that something that's supposed to be done on each visit?

MR. GALLO: No. It's not done on each visit. It was done whenever I felt the need for it.

MR. SCOTT: So that's not a prerequisite for intensive supervision?

MR. GALLO: You must submit to it. That's what you have to do.

And there's not a minimum, and there's not a maximum urinalysis.

HEARING EXAMINER ENGLE: Does that answer your question, Mr. Scott?

MR. SCOTT: Yes, sir.

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HEARING EXAMINER ENGLE: Now, I think we're ready to go forward. I understand, Mr. Westerfield, that there's not going to be any admissions to any of these charges so we'll hear the witnesses and their testimony with regard to each.

MR. WESTERFIELD: Yeah.

HEARING EXAMINER ENGLE: Well, I don't know whether we have witnesses present here or not. Are you ready to go, Mr. Gallo, with . . .

MR. GALLO: Yes, I am.

HEARING EXAMINER ENGLE: . . . condition 5b, count A? Do you need to call a witness for that?

MR. GALLO: Yes, sir. I would call Mr. Eric Hahn.

HEARING EXAMINER ENGLE: Okay. We'll go off the record till the witness is available.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record. The first witness called by the State is in the hearing room. Sir, could I ask you to state your full name for the record please?

MR. HAHN: Eric Hahn.

HEARING EXAMINER ENGLE: You may remain seated, Mr. Hahn. Would you raise your right hand? Mr. Hahn, do you swear any testimony you give at this hearing will be the truth, the whole truth, and nothing but the truth so help you?

MR. HAHN: Yes.

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HEARING EXAMINE ENGLE: Mr. Hahn, may I have your address please?

MR. HAHN: HCR1, Box 536, Sciota, Pennsylvania.

HEARING EXAMINER ENGLE: Will you spell it please?

MR. HAHN: S-c-i-o-t-a.

HEARING EXAMINER ENGLE: Your witness, Mr. Gallo.

MR. GALLO: Mr. Hahn, do you remember. . .

MR. HAHN: Excuse me.

MR. GALLO: Yes, sir.

MR. HAHN: You said if I chose not to testify, I didn't have to testify.

MR. GALLO: I said I can't make you testify.

MR. HAHN: Well, I don't want to testify.

MR. GALLO: Okay. May I view Mr. Hahn as a hostile witness?

HEARING EXAMINER ENGLE: I assume that during your investigation that you have some idea as to what Mr. Hahn might testify to at this hearing?

MR. GALLO: Yes, I do, sir. I have a sworn statement given by Mr. Hahn on 2/4/1994.

HEARING EXAMINER ENGLE: You do?

MR. GALLO: Yes, sir. It was taken by Notary Public Doris Antley (ph) Baker in the Scranton District Office.

HEARING EXAMINER ENGLE: Okay. Mr. Hahn, do you recall having given that statement?

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MR. HAHN: Yes.

MR. WESTERFIELD: I would, of course, object to either treating

Mr. Hahn as a hostile witness or admitting any hearsay statements.

MR. GALLO: I think that Mr. Hahn's statement should be allowed to be entered into evidence as it is the prior statement, and it shows that Mr. Hahn did swear to the statement that was taken and (INAUDIBLE) sealed (INAUDIBLE) witnesses.

MR. WESTERFIELD: Your Honor, the purpose of these hearings is for the Department to present its evidence, and it has to present evidence that at least to some extent it's consistent with the rules of evidence.

HEARING EXAMINER ENGLE: I hope so.

MR. GALLO: Well, a preconsistent statement given by a Defendant if the Defendant previously testified is admissible.

MR. WESTERFIELD: Not in any book I ever saw.

HEARING EXAMINER ENGLE: We're going to recess, gentlemen, for five minutes.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record after a brief recess. Let me see that Affidavit, Mr. Gallo. Mr. Hahn, I'm going to show you this document, and I want to know whether or not

you signed this and made that statement?

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MR. HAHN: Yes.

HEARING EXAMINER ENGLE: Mr. Hahn, if you signed this - - if you made this statement, and you indicated that you have signed this Affidavit on the 4th of February 1994, what's your reluctance to testify today?

MR. HAHN: (INAUDIBLE).

HEARING EXAMINER ENGLE: You acknowledge that you made that statement on February the 4th. Why are you reluctant to testify today?

MR. HAHN: Well, a number of reasons. First of all, when we made these statements, we were assured that he would not know the charges until the first hearing. And the parole people were told that my son would lose thousands of dollars if they weren't telling us the truth. And he received the charges the day he was arrested, and my son lost over $60,000.

HEARING EXAMINER ENGLE: How does your son figure into this?

MR. HAHN: He was partners with Keith's mother in the building.

HEARING EXAMINER ENGLE: Okay.

MR. HAHN: (INAUDIBLE) owns this business.

HEARING EXAMINER ENGLE: This tape recorder doesn't know and doesn't understand any of this, okay, so for my benefit and the tape recorder's, let's back up a little bit,

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HEARING EXAMINER ENGLE: (cont'd) Mr. Hahn. Now, the question is you're reluctant to testify today after acknowledging that you made that statement on February the 4th.

MR. HAHN: Also . . .

HEARING EXAMINER ENGLE: The reason you're telling me that you're reluctant to testify is that if you testify, your son will or has lost business?

MR. HAHN: Yes.

HEARING EXAMINER ENGLE: And your son is a contractor?

MR. HAHN: Yes.

HEARING EXAMINER ENGLE: And what would cause your son to lose business if you testify?

MR. HAHN: Well, they were told that. . .

HEARING EXAMINER ENGLE: Who is they?

MR. HAHN: The parole people were told that Keith's mother would retaliate immediately.

HEARING EXAMINER ENGLE: Who told the parole people that?

MR. HAHN: My son Dan and I did.

HEARING EXAMINER ENGLE: Okay. And so what you're saying - - now, who is Mr. Scott's mother?

MR. HAHN: Patty McDaniels.

HEARING EXAMINER ENGLE: Ms. Patty McDaniels?

MR. HAHN: Yes.

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HEARING EXAMINER ENGLE: And she does business with your son?

MR. HAHN: Not anymore. That's not the biggest reason at all. I feel my wife put me in this state of mind, and I'm not sure anymore if it was justified. I was afraid for my granddaughter's life, and my wife is - - has a lot of problems, and I think that I was taken advantage of.

HEARING EXAMINER ENGLE: When?

MR. HAHN: All the time. . .

HEARING EXAMINER ENGLE: You mean when you made the statement?

MR. HAHN: No. All the time that he was out.

HEARING EXAMINER ENGLE: (INAUDIBLE) out, but are you suggesting now that the main reason you're reluctant to testify is that you are afraid for your family members. . .

MR. HAHN: Oh, no. No, no. The reason I made this statement is I was told that there was threats against my granddaughter. At this point, I do not believe my wife anymore. She's a sick person.

HEARING EXAMINER ENGLE: Where's that Affidavit?

MR. HAHN: Well, I'm not saying - - I told you that that . . .

HEARING EXAMINER ENGLE: Now, you're under oath, and you're going to get yourself in trouble here, and I want to advise you of something first. Okay? That if this Affidavit

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HEARING EXAMINER ENGLE: (cont'd) is not the truth, you could be arrested on criminal - - no, wait. Don't answer. If this

Affidavit is not the truth, you could be arrested on criminal charges. If you don't tell the truth at this hearing, okay, you could be charged with criminal charges. So I want you to think carefully before you say anything.

MR. HAHN: I didn't say it wasn't the truth.

MR. WESTERFIELD: Your Honor, with all due respect, if this witness is going to be threatened - - he's ordered upon to testify - - if he's going to be threatened with perjury charges, he needs a lawyer. He needs to be advised before he's forced to testify.

HEARING EXAMINER ENGLE: He's not being threatened, Mr. Westerfield. Let's make sure the record's clear. I'm trying to be fair to the witness.

MR. WESTERFIELD: Well, Your Honor, when you tell him that he can be charged with a criminal offense for making false statements, I think he's in the position where he at least - - I at least understand that to mean either you tell the truth or he can get charged with a criminal offense. He said he doesn't want to testify, and I think that pushing him beyond that except by using contempt power, if that's appropriate, is putting him in a position where he's kind of damned if he does and

damned if he doesn't. If he says that what was said in the Affidavit isn't true, then you've told him he could be charged

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MR. WESTERFIELD: (cont'd) with a criminal offense. If he says something false today, you've told him he can be charged with a criminal offense.

HEARING EXAMINER ENGLE: You're remaining reluctant to testify in any case. Is that right, Mr. Hahn?

MR. HAHN: Yes.

HEARING EXAMINER ENGLE: Okay. This document's going to be accepted and made part of the record. Counsel, would you like to look at the document?

MR. WESTERFIELD: Yes, Your Honor.

HEARING EXAMINER ENGLE: Do you have any questions of the author?

MR. WESTERFIELD: I've stated my objection to admission, and I take it this is accepted subject to those objections?

HEARING EXAMINER ENGLE: Your objection is noted for the record. It's overruled.

MR. WESTERFIELD: Thank you. Mr. Hahn, who was present when this statement was taken?

MR. HAHN: Floyd Gallo and I believe two other men, but I don't know their names.

MR. WESTERFIELD: Parole officers?

MR. HAHN: Yes.

MR. WESTERFIELD: Did you type this?

MR. HAHN: No.

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MR. WESTERFIELD: Who typed it?

MR. HAHN: It was the notary girl there, I think.

MR. WESTERFIELD: And was that a person at the notary at the Bureau of Probation and Parole Office in Scranton?

MR. HAHN: Yes.

MR. WESTERFIELD: The notary is a Lackawanna County notary I see from the document. You don't live in Lackawanna County. Right?

MR. HAHN: No.

MR. WESTERFIELD: You live in Monroe County?

MR. HAHN: Yes.

MR. WESTERFIELD: And how did you happen to be at the Probation and Parole Office that day when this Affidavit was executed?

MR. HAHN: Well, they asked us to come up and make a statement.

MR. WESTERFIELD: And who dictated the words or who came up with the words that are in this statement?

MR. HAHN: Exact words?

MR. WESTERFIELD: Yes, sir.

MR. HAHN: I don't know.

MR. WESTERFIELD: I mean, did you dictate to the person who was typing? Are these your words?

MR. HAHN: Not verbatim but it's . . .

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MR. WESTERFIELD: Did you hear one of the parole officers dictate the words or tell the typist what to type?

MR. HAHN: No. I was just given it to read over and sign it.

MR. WESTERFIELD: Was it composed by the typist in your presence, or was that done in another room?

MR. HAHN: In another room.

MR. WESTERFIELD: So you weren't present when the parole officers and the typist prepared this statement?

MR. HAHN: No.

MR. WESTERFIELD: That was done in another room. They had brought it in and presented it to you, and you signed it?

MR. HAHN: Yes.

MR. WESTERFIELD: How many drafts of this statement were prepared? Was there just one?

MR. HAHN: One.

MR. WESTERFIELD: Were you advised by parole officers that you didn't have to sign this Affidavit and that there was no compulsion on you to give an Affidavit?

MR. HAHN: Yeah, they advised me of that.

MR. WESTERFIELD: Did they offer you - - did they tell you that if you sign this Affidavit they would be able to use it to get Mr. Scott arrested and get him off the streets?

MR. HAHN: Yes.

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MR. WESTERFIELD: And were you anxious to have him out of the way, as it were, by having him back in jail?

MR. HAHN: Yes.

MR. WESTERFIELD: And that was for several reasons, wasn't it?

MR. HAHN: Yes.

MR. WESTERFIELD: One was that you believed that Mr. Scott was involved romantically with your wife?

MR. HAHN: Yes.

MR. WESTERFIELD: And you'd been advised by the parole officers that Mr. Scott would make threats against your grandchildren - - I'm sorry - - not by the parole officers - - you had been advised by your wife Mr. Scott had made threats against your grandchildren?

MR. HAHN: Yes.

MR. WESTERFIELD: And you now believe that those statements by your wife were false. Is that right?

MR. HAHN: Yes.

MR. WESTERFIELD: So is it true that your primary motivation in giving this Affidavit was to see that Mr. Scott was sent back to jail?

MR. HAHN: Yes.

MR. WESTERFIELD: And that was on the basis of your personal interest in Mr. Scott's romantic activities with your wife and the statements your wife had made to you which

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MR. WESTERFIELD: (cont'd) you now believe to be false about the threats?

MR. HAHN: Yes.

MR. WESTERFIELD; The two incidents that are mentioned in this Affidavit according to what's stated here took place September 2, 1993, and September 4, 1993. Is that right? Did you answer?

MR. HAHN: Yes.

MR. WESTERFIELD: And the Affidavit was February 4, 1994. Did you tell any of the parole officers about either of these incidents, say, within a week after they occurred during the first half of September of '93?

MR. HAHN: No.

MR. WESTERFIELD: You were aware that Mr. Scott was on parole?

MR. HAHN: Yes.

MR. WESTERFIELD: But it wasn't until when that you first advised

the parole officers of these two incidents?

MR. HAHN: Well, the first time that I talked to Floyd.

MR. WESTERFIELD: Which was when?

MR. HAHN: I guess it would be in February right before that was signed.

MR. WESTERFIELD: Okay. So that would have been October, November, December, January, February, almost - -

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MR. WESTERFIELD: (cont'd) certainly a lot more than four months - - almost five months after these incidents allegedly happened?

MR. HAHN: Yes.

MR. WESTERFIELD: And had you been visited by Mr. Gallo or talked to Mr. Gallo at anytime during that four or five-month interim?

MR. HAHN: [No audible reply.]

MR. WESTERFIELD: May I have a moment?

HEARING EXAMINER ENGLE: Off the record.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record.

MR. WESTERFIELD: I don't have any other questions.

HEARING EXAMINER ENGLE: Mr. Gallo, do you have any questions about this document?

MR. GALLO: Yes, I have.

HEARING EXAMINER ENGLE: Go ahead. Let the record show it's S-1, Affidavit by Mr. Hahn.

MR. GALLO: Mr. Hahn, do you recall on February the 1st, 1994, us talking on the phone and you requesting to have a meeting with me and Mr. Opperlee?

MR. HAHN: Yes.

MR. GALLO: Do you recall that your wife got on the extension line and told me that Keith's got it, that he

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MR. GALLO: (cont'd) said he was going to kill your grandchildren?

MR. HAHN: Yes.

MR. GALLO: Okay. Also, do you recall that on 2/2/1994 that me and you and Mr. Opperlee had a meeting in a restaurant?

MR. HAHN: Yes.

MR. GALLO: And during that meeting that you stated to me that the client was in possession of a firearm three times and had a bow and

arrow gun once? Do you remember . . .

MR. HAHN: I remember my son telling me that.

MR. GALLO: Do you remember indicating that the client also - - you told me he had been drinking on numerous occasions?

MR. HAHN: Yes.

MR. GALLO: And with regards to your statement, did you voluntarily come into the office - - into the Scranton office? Were you brought in, or did you come in . . .

MR. HAHN: I came in voluntarily.

MR. GALLO: Okay. And did you voluntarily sign this statement?

MR. HAHN: Yes.

MR. GALLO: And basically the things in this statement are true and correct?

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MR. HAHN: Yes.

MR. GALLO: That's all I have. I'd like to enter it into evidence.

HEARING EXAMINER ENGLE: Do you want to show the witness this paper?

MR. WESTERFIELD: Mr. Hahn, I'll show you another piece of

paper that has a signature. Is that your signature on the bottom?

MR. HAHN: Yes.

MR. WESTERFIELD: And is that statement signed in front of Notary Mary . . .

MR. HAHN: Yes.

MR. WESTERFIELD: Mary Lou H-o - - I have a hard time making that out.

HEARING EXAMINER ENGLE: Does it have a notary seal, Mr. Westerfield?

MR. WESTERFIELD: Yes, it does, Your Honor.

HEARING EXAMINER ENGLE: We'll accept it.

MR. WESTERFIELD: Did you make that statement and make it in front of the notary and swear to it?

MR. HAHN: Yes.

MR. WESTERFIELD: Your Honor, I'll move this - - this is an Affidavit dated March 29, 1994, and I'd move this Affidavit into evidence.

HEARING EXAMINER ENGLE: The document will be

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HEARING EXAMINER ENGLE: (cont'd) marked as D-1.

MR. GALLO: I'd like to address a couple of things in here if you don't mind. You say you were coerced into making a statement and signing a statement. A little while ago you testified that you signed this statement of your own free will. Which is correct? Did you sign it of your own free will, or did somebody make you sign it?

MR. HAHN: No. I don't know if that's the right word. I . . .

MR. GALLO: Well, this is your statement, sir, and it is . . .

MR. HAHN: Yeah, well . . .

MR. GALLO: Did somebody else make these words up for you?

MR. HAHN: No. I feel we were both taken advantage of. We were lied to.

MR. GALLO: Okay. As far as this gun in the pocket, is it not true that Mr. Opperlee told me that Mr. Scott had a .22 caliber pistol which you had in a bag, and that Mr. Scott had it in his pocket, but he could not see it? But since he was a gun expert and a licensed gun dealer, he knew the outshape of the gun and told me there was a gun in the pocket?

MR. HAHN: Yes.

MR. GALLO: Okay. We never charged Mr. Scott with having a gun in his pocket, did we? Do you know if we

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MR. GALLO: (cont'd) did?

MR. HAHN: [No audible reply.]

MR. GALLO: And the record will show we never charged him of this gun in his pocket because we had no proof of that. As far as me wanting him out of the street, about the gun in his pocket - - do you want me to say that he had a gun in his pocket?

MR. WESTERFIELD: Well, you told . . .

HEARING EXAMINER ENGLE: Well, wait a minute, gentlemen. Wait a minute. Let's have a little order here. Mr. Gallo, you can ask questions, but let's shorten them up a little bit. He'll get lost in the question.

MR. GALLO: Okay. I have no further questions.

HEARING EXAMINER ENGLE: Any questions of the witness on the signing of that document, counsel?

MR. WESTERFIELD: Mr. Hahn, did Mr. Gallo encourage you to make statements that Mr. Scott had threatened you or other members

of your family?

MR. HAHN: Yes, but it was hearsay. I told him it wasn't made directly of me.

MR. WESTERFIELD: These are the things that your wife had told you about that you now say you don't believe to be true?

MR. HAHN: [No audible reply.]

MR. WESTERFIELD: I have no questions, Your Honor.

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MR. GALLO: I have just one further question. You say I was trying to make you say these things? Is that what you're trying to tell us?

MR. HAHN: [No audible reply.]

MR. GALLO: Well, did you tell me these things, and I asked you if it happened to you personally?

MR. HAHN: The only thing - - you told my son to say he saw the handle of the gun sticking out to make it better, and he said he wouldn't lie.

MR. GALLO: Okay. No further questions.

HEARING EXAMINER ENGLE: Any further questions for the witness? Okay. Now, well, one of the affidavits, the S-1 Affidavit,

Mr. Hahn was on the list to be called with regard to condition 5b, count A. Right, Mr. Gallo?

MR. GALLO: That's correct.

HEARING EXAMINER ENGLE: And you were going to also, as I understand it, recall him to testify to special condition 7?

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: Does everyone have the Hearing Notice in front of them? I want to indicate that - - separate those counts in condition 7. The first one, on or about September 2, '93, will be count A, and on January 18, 1994, will be count B. Now, Mr. Hahn was - - your offer earlier was that Mr. Hahn was going to be called to testify with regard

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HEARING EXAMINER ENGLE: (cont'd) to one of these two?

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: Which one?

MR. GALLO: Yeah, on the consumed clear malt alcoholic beverages.

HEARING EXAMINER ENGLE: So that would have been

condition 7a?

MR. GALLO: 7a, sir.

HEARING EXAMINER ENGLE: And is that dealt with in this S-1 Affidavit?

MR. GALLO: Yes, it is, sir.

HEARING EXAMINER ENGLE: Do you have any further questions of this witness? Is there any . . .

(TAPE TWO)

HEARING EXAMINER ENGLE: Mr. Gallo, do you have any other questions of Witness Hahn or any other documents before we excuse him?

MR. GALLO: No. I have no other questions, but I would like to submit into evidence a copy of the Record of Interview that's in my field book dated 2/1/91 which indicates that I spoke to Mr. Hahn and that Mrs. Hahn got on the phone and stated that client had said he would kill her grandchildren.

MR. WESTERFIELD: Objection, Your Honor. That's hearsay.

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HEARING EXAMINER ENGLE: Sustained. Anything further,

Mr. Gallo?

MR. GALLO: I would like to enter the same thing. I would like to enter in a Record of Interview in my field book indicating that I spoke to Mr. Opperlee and Mr. Hahn on 2/2/94 . . .

MR. WESTERFIELD: Your Honor, I object. You're the fact-finder as well as the evidence ruler, and reading these things to you and then having objection sustained is - - I understand that you'll try to segregate the inadmissible evidence out. But giving the witness the opportunity to read them and then having them ruled inadmissible is not quite kosher.

HEARING EXAMINER ENGLE: We'll try to be as equitable as we can about this matter, Mr. Westerfield. Now, are you going to read a statement, Mr. Gallo, where someone told you something?

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: Counsel's objection is sustained. Mr. Hahn, you may be excused. Let's go off the record momentarily.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record.

Mr. Westerfield has indicated that Mr. Scott is going to testify with regard to condition 5b, count A.

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MR. WESTERFIELD: You have seen S-1, the Affidavit, in which Mr. Hahn made a statement that on September 4 of 1993 he witnessed you firing a .22 Magnum revolver in his backyard. Do you see that paragraph?

MR. SCOTT: Yeah.

MR. WESTERFIELD: The weapon belonged to Mr. Hahn and he says was used by Keith Scott without permission?

MR. SCOTT: Right.

MR. WESTERFIELD: Tell the Judge what happened on that day with this .22 Magnum revolver.

MR. SCOTT: Everyone was target practicing out in the backyard.

HEARING EXAMINER ENGLE: Pardon me. Who is everyone, Mr. Scott?

MR. SCOTT: Well, several people - - Eric - - friends - - I don't know the names of those target practicing . . .

MR. WESTERFIELD: And this is the backyard of?

MR. SCOTT: Eric's residence. And I was handed the pistol and took several shots with it at a target hanging from a tree.

MR. WESTERFIELD: After you took the shots at the target, what did you do with the pistol?

MR. SCOTT: I gave it back to him. I made sure it was cleared. And he took it and made sure there was no bullets

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MR. SCOTT: (cont'd) and put it away.

MR. WESTERFIELD: Who handed it to you?

MR. SCOTT: Eric did. Eric Hahn.

MR. WESTERFIELD: And Eric was aware that you were on parole at that time?

MR. SCOTT: Yes, sir.

MR. WESTERFIELD: I have nothing else on that charge.

HEARING EXAMINER ENGLE: Questions, Mr. Gallo, for Mr. Scott?

MR. GALLO: Yes. Mr. Scott, when I came to your house when you were released from prison, did I explain to you the conditions governing parole, do you recall?

MR. SCOTT: Yes, sir, you did.

MR. GALLO: Okay. Do you recall when I did my talk to you about condition 5b, refrain from owning or possessing a firearm or any other weapon?

MR. SCOTT: Yes, sir, I do.

MR. GALLO: Okay. So then when you took that target practice you realized that you were in violation of your parole?

MR. SCOTT: Yes, sir. I just pled guilty to having that .22 Magnum in my possession.

MR. GALLO: No further questions.

MR. WESTERFIELD: For how long did you have the

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MR. WESTERFIELD: (cont'd) handgun in your possession?

MR. SCOTT: Three shots at the target (INAUDIBLE).

MR. WESTERFIELD: I have nothing else, Your Honor.

HEARING EXAMINER ENGLE: One clarification on your testimony, Mr. Scott. Did you have knowledge at the time to whom the pistol belonged?

MR. SCOTT: Yes, sir.

HEARING EXAMINER ENGLE: And what was your understanding as to the ownership of the weapon? Who owned it?

MR. SCOTT: Eric Hahn.

HEARING EXAMINER ENGLE: Eric Hahn. Okay. Now, on the day in question when "everyone was target practicing," you, obviously, have professed that Mr. Eric Hahn was present. Who else was present? Do you recall?

MR. SCOTT: Friends. No, I don't.

HEARING EXAMINER ENGLE: Do you recall how many others may have been present?

MR. SCOTT: Maybe two or three others. It was at a pool party. People were - - had - - after the party left, there was only a couple people left. And I don't remember. . .

HEARING EXAMINER ENGLE: So that you do remember though that it. . .

MR. SCOTT: I remember that I fired the weapon.

HEARING EXAMINER ENGLE: That's not the question, Mr. Scott. The question is besides yourself and Mr. Eric Hahn,

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HEARING EXAMINER ENGLE: (cont'd) do you recall anyone else that was there? You said you did not.

MR. SCOTT: No.

HEARING EXAMINER ENGLE: And then I asked you about how many others were present?

MR. SCOTT: I don't remember.

HEARING EXAMINER ENGLE: Was there anyone present in addition to you and Mr. Hahn?

MR. SCOTT: Yes.

HEARING EXAMINER ENGLE: Did you see Mr. Hahn target practicing with the gun?

MR. SCOTT: Yes.

HEARING EXAMINER ENGLE: Did you see anyone else shoot the gun?

MR. SCOTT: Yes, but I don't know the name of the person. I don't recall.

HEARING EXAMINER ENGLE: I understand that. So then there was at least one other person present?

MR. SCOTT: Yes, sir.

HEARING EXAMINER ENGLE: Now, other than Mr. Hahn and other than the second person that you saw shooting at the target, do you recall having seen anyone else target shooting?

MR. SCOTT: No. No. I don't recall.

HEARING EXAMINER ENGLE: Okay. Now, when someone handed you the gun. . .

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MR. SCOTT: No, Eric.

HEARING EXAMINER ENGLE: Mr. Hahn handed you the gun, okay, and you fired at the target two or three times according to your testimony. Right. Now, when you were finished, to whom did you return the gun?

MR. SCOTT: Eric.

HEARING EXAMINER ENGLE: Okay. Any other questions?

MR. WESTERFIELD: No, sir.

MR. GALLO: I just have one other question. Was Mrs. Hahn there?

MR. SCOTT: I don't recall where she was.

MR. GALLO: Okay.

HEARING EXAMINER ENGLE: Okay, gentlemen. Now,

having concluded with the exhibits and testimony on condition 5b, count A, can we now move to 5b, count B?

MR. GALLO: Yes.

HEARING EXAMINER ENGLE: Do you have a witness you wish to call?

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: Off the record till the witness is in the room.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: Let the record show that the witness has entered the hearing room, and according to the

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HEARING EXAMINER ENGLE: (cont'd) witness list, this is Ray Opperlee?

MR. OPPERLEE: Opperlee.

HEARING EXAMINER ENGLE: Opperlee. Would you spell your last name please for the record?

MR. OPPERLEE: O-p-p-e-r-l-e-e.

HEARING EXAMINER ENGLE: Okay. You may remain

seated, Mr. Opperlee. Would you raise your right hand please? Do you swear any testimony you give at this hearing to be the truth, the whole truth, and nothing but the truth so help you?

MR. OPPERLEE: Yes.

HEARING EXAMINER ENGLE: Thank you. Mr. Opperlee, I would like to have your address please?

MR. OPPERLEE: Box 171 . . .

HEARING EXAMINER ENGLE: Box 171. . .

MR. OPPERLEE: Gilbert.

HEARING EXAMINER ENGLE: Spell it please.

MR. OPPERLEE: G-i-l-b-e-r-t.

HEARING EXAMINER ENGLE: Pennsylvania?

MR. OPPERLEE: Right. 18331.

HEARING EXAMINER ENGLE: Thanks. Your witness, Mr. Gallo.

MR. GALLO: Mr. Opperlee, are you the employer of or were you the employer of Mr. Scott?

MR. OPPERLEE: Yes.

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MR. GALLO: Are you also the son of Dot Hahn who is the wife of Eric Hahn?

MR. OPPERLEE: Yes.

MR. GALLO: Do you recall on 2/2/1994 meeting with me and Mr. Hahn in a restaurant on 15?

MR. OPPERLEE: Yes.

MR. GALLO: Do you recall making statements to me there, and I advised you that you should come to our office on 2/4/1994 and give a formal statement, sir — a statement that could be typed and formalized?

MR. OPPERLEE: Uh-huh. Yes.

MR. GALLO: And did anybody force you to come to our office?

MR. OPPERLEE: No, nobody handcuffed me and took me there. No.

MR. GALLO: Were you driven there, or did you come on your own?

MR. OPPERLEE: I came on my own.

MR. GALLO: Okay. Who else was with you when you came?

MR. OPPERLEE: Mr. Hahn.

MR. GALLO: And who else?

MR. OPPERLEE: My wife.

MR. GALLO: And your children?

MR. OPPERLEE: And children.

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MR. GALLO: Were you armed at the time?

MR. OPPERLEE: Yes, I was.

MR. GALLO: Did you give me a reason for being armed?

MR. OPPERLEE: I'm not sure exactly.

MR. GALLO: Did you not tell me that you were . . .

MR. WESTERFIELD: Objection. He's leading, Your Honor.

HEARING EXAMINER ENGLE: Sustained.

MR. GALLO: Okay. So when you came in our office, you were interviewed. Is that correct? By myself and Supervisor Pat Wynn?

MR. OPPERLEE: Correct.

MR. GALLO: As a result of that interview, did you give a statement to one Doris A. Baker?

MR. OPPERLEE: Yes.

MR. GALLO: Okay. And did you sign that statement?

MR. OPPERLEE: Yes, I did.

MR. GALLO: Was that statement true and correct?

MR. OPPERLEE: Yeah. The statement is true and correct, but I would like to explain it.

MR. GALLO: Well . . .

HEARING EXAMINER ENGLE: Your witness.

MR. GALLO: No. You don't have to explain it.

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MR. GALLO: (cont'd) Basically, I would like to ask if the witness would review the statement to make sure we're talking about the exact same statement . . .

MR. WESTERFIELD: Your Honor, I object to that procedure. He should ask him direct questions and get answers unless the witness is refusing to answer.

HEARING EXAMINER ENGLE: (INAUDIBLE) . . .

MR. OPPERLEE: Excuse me.

HEARING EXAMINER ENGLE: Just a second now, Mr. Opperlee.

MR. GALLO: Mr. Opperlee, is it true that in your statement that you said that . . .

MR. WESTERFIELD: Objection, Your Honor, leading. It's got to be leading the way he's asking these questions.

HEARING EXAMINER ENGLE: Can you suggest a way for him to ask it that it's not, Mr. Westerfield?

MR. WESTERFIELD: Well, I'd suggest that he ask him whether a particular event happened. Did anything happen on such and such a date?

HEARING EXAMINER ENGLE: Thank you. Go ahead, Mr. Gallo.

MR. GALLO: Did Mr. Scott in your presence threaten one of your employees, Gerald Thomas?

MR. OPPERLEE: Excuse me, but if I'm not going to be given time to say what I have to say, I am done testifying.

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MR. GALLO: Do you wish to make a statement?

HEARING EXAMINER ENGLE: Do you want to confer with your witness?

MR. GALLO: Yeah.

MR. OPPERLEE: No. I will say right now you don't have to

shut your recorder off.

HEARING EXAMINER ENGLE: Just a second, Mr. Opperlee.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record. Where are we, gentlemen?

MR. GALLO: Yes. I have conferred with my witness outside the room, and my witness indicates he would like to make a statement, and I think it would be proper for him to make this statement.

HEARING EXAMINER ENGLE: All right. Go ahead, Mr. Opperlee.

MR. OPPERLEE: Okay. The charges that were made at the office — on what date was that?

MR. GALLO: February the 4th, 1994.

MR. OPPERLEE: They were made by me, and they were made under a lot of stress. Now, that position that I was put in at the time was very hard. Keith was working for me, and he was dating my mother. And they were supposed to be getting divorced and getting married and so on and so forth. At the

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MR. OPPERLEE: (cont'd) same time, right up until this day, every time my mother and father were together, they were talking about getting back together. They were constantly together when we were at work. She was telling Keith that she would want to be with him. She was telling my father she wants to be with him. Okay. In fact, we've had dozens of meetings, the three of us together, Eric Hahn, Dorothy Hahn, and myself, where she wanted out of the situation with Mr. Scott. But she told me every day on a daily basis that he was going to harm the family. There would be no survivors left if she tried breaking up with him. This was drilled into my head daily by Mrs. Hahn prior to me making these charges, and I would like that to be clear.

MR. GALLO: Now, I'd like to ask you a question. On the statement that you made on February the 4th, 1994, are these charges true and correct?

MR. WESTERFIELD: Objection. The statement's not in evidence so . . .

HEARING EXAMINER ENGLE: The witness is here, Mr. Gallo, so let's ask the gentleman specific questions.

MR. GALLO: Mr. Opperlee, were you present when Keith Scott threatened Gerald Thomas?

MR. OPPERLEE: Yes.

MR. GALLO: Would you in your own words describe the situation — what happened?

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MR. OPPERLEE: Now, in my own words — no, I can't.

MR. GALLO: Did Mr. Scott say anything to Mr. — to Gerald Thomas?

MR. OPPERLEE: Yes, he did.

MR. GALLO: What did he say?

MR. OPPERLEE: He was yelling at Mr. Thomas very loudly. They were having a major disagreement.

MR. GALLO: Do you remember his words?

MR. OPPERLEE: I guess if I'd read them off the statement I could remember the words.

HEARING EXAMINER ENGLE: Refresh the witness's recollection.

MR. OPPERLEE: There's nothing on there.

MR. GALLO: Please look at the — (INAUDIBLE) . . .

MR. WESTERFIELD: You're giving him the wrong statement.

MR. GALLO: Oh, I'm sorry. Very good. Thank you. [Pause] Yes. Now, do you recall what the words were Mr. Scott used after refreshing . . .

MR. OPPERLEE: I'm reluctant to answer these questions.

MR. GALLO: Okay. When Mr. Scott was having this argument with Gerald Thomas, did you observe anything unusual about Mr. Scott's body? Did he have anything unusual on him or

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MR. GALLO: (cont'd) anything like that?

MR. WESTERFIELD: You may refer to your statement if you wish to refresh your memory.

MR. OPPERLEE: He had two hammers with him.

MR. GALLO: Okay. And these two hammers, were they attached to his body in any way?

MR. OPPERLEE: It's unclear.

MR. GALLO: It's unclear. Okay. You're referring to your statement?

MR. OPPERLEE: Yes.

MR. GALLO: Is it not clear in your statement there? Could you read that paragraph (INAUDIBLE)?

MR. OPPERLEE: Yes.

MR. GALLO: What does it say here?

MR. OPPERLEE: It is clear in the statement.

MR. GALLO: And what does it say?

MR. OPPERLEE: It said he had two hammers.

MR. GALLO: Go on. What else does it say? If not, I'll instruct you

. . .

MR. WESTERFIELD: Your Honor, I object to him prompting the witness to read the statement.

MR. GALLO: Well, he's read part of the statement — part of the sentence. I'm just asking him to finish the sentence.

MR. WESTERFIELD: Yeah. I should have objected

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MR. WESTERFIELD: (cont'd) earlier.

MR. GALLO: But you didn't, and the sentence should be allowed to be finished.

MR. WESTERFIELD: No, it shouldn't be allowed to be. You have the right — Your Honor, if I may, I believe that Mr. Gallo has the right to ask the witness to read the statement to refresh his recollection, and then ask him the question again. If the witness says he still can't add to it, then that's the end of that exercise.

HEARING EXAMINER ENGLE: And I plainly agree with Mr. Westerfield.

MR. GALLO: But there was no objection at that time.

HEARING EXAMINER ENGLE: Other questions from this point, Mr. Gallo.

Mr. GALLO: Mr. Opperlee, do you own a 10mm handgun?

MR. OPPERLEE: Yes.

MR. GALLO: What type of gun is that? What is the make of it?

MR. OPPERLEE: Glock.

MR. GALLO: A Glock. Have you ever taken this gun on the job site with you?

MR. OPPERLEE: Yes, I have.

MR. GALLO: Have you ever seen Mr. Scott handle

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MR. GALLO: (cont'd) this gun and fire this gun?

MR. OPPERLEE: That's a two-part question.

MR. GALLO: Okay. Have you ever seen Mr. Scott handle the gun?

MR. OPPERLEE: Yes, he handled the gun.

MR. GALLO: Okay. Have you ever seen him fire the weapon?

MR. OPPERLEE: I was firing my weapon at Whiting (ph), my range, while he was present, and, yes, he fired the weapon one time.

MR. GALLO: Okay. We were on 5b. Is that correct, sir?

HEARING EXAMINER ENGLE: 5b.

MR. GALLO: That's all I have of questions as to 5b.

HEARING EXAMINER ENGLE: Okay. Let's stop there and give Mr. Westerfield an opportunity.

MR. WESTERFIELD: Mr. Opperlee, I take it that the — one of the charges here is that during September 1993 Mr. Scott was in possession of a 10mm Glock, G-l-o-c-k, handgun. And the extent of your testimony on that issue is that you were target practicing, and Mr. Scott took a shot with that gun and then gave it back to you?

MR. OPPERLEE: Yes.

MR. WESTERFIELD: And is that what you were

MR. WESTERFIELD: (cont'd) referring to when you said that Mr. Scott had handled . . .

MR. OPPERLEE: Uh-huh.

MR. WESTERFIELD: . . . that particular handgun? Who else was present when that happened?

MR. OPPERLEE: I believe Mrs. Hahn.

MR. WESTERFIELD: But that was at a target shooting area on your own property?

MR. OPPERLEE: It was on the property of my parents. It was a backstop that I had made and shot at over the years.

MR. WESTERFIELD: And to your knowledge that was the entire extent of Mr. Scott's contact with that 10mm Glock handgun?

MR. OPPERLEE: I would say to the best of my knowledge.

MR. WESTERFIELD: All right. I have no other questions.

MR. GALLO: I have no questions.

HEARING EXAMINER ENGLE: Fine. Are we finished, gentlemen? Mr. Westerfield, do you need to call any witnesses or have anyone testify concerning 5b, B?

MR. WESTERFIELD: No, Your Honor.

HEARING EXAMINER ENGLE: Okay. Now, Mr. Gallo, do I understand Mr. Opperlee is a — am I pronouncing that right?

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MR. OPPERLEE: Opperlee.

HEARING EXAMINER ENGLE: Mr. Opperlee is a witness with regard to another allegation?

MR. GALLO: Yes, sir. Number 7b.

HEARING EXAMINER ENGLE: 7b?

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: Okay. Let's find out what other testimony is here then, and we'll go to 7b next.

MR. GALLO: Mr. Opperlee, on or about 1/18/94, did you see Mr. Scott consume Southern Comfort alcoholic beverages?

MR. OPPERLEE: Yes.

MR. GALLO: And where did this take place?

MR. OPPERLEE: I believe on the property of Ms. Dermis's (ph) home.

MR. GALLO: Okay. No further questions.

MR. WESTERFIELD: You saw him drink Southern Comfort?

MR. OPPERLEE: Yes.

MR. WESTERFIELD: Out of a bottle?

MR. OPPERLEE: Yes.

MR. WESTERFIELD: Who handed him the bottle, or where did he get the bottle from?

MR. OPPERLEE: I can't recall.

MR. WESTERFIELD: Were people standing around passing a bottle around?

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MR. OPPERLEE: (INAUDIBLE) witness for or against him? I don't understand what I'm saying here.

HEARING EXAMINER ENGLE: Well, what you need to do is not choose sides, Mr. Opperlee. This is to determine the truth of the matter. My best advice to you is such when you're asked the question you give the most truthful — you give a truthful answer. If you do not recall, of course, you do not recall. Otherwise, I expect to hear the truth. You're under oath.

MR. OPPERLEE: I realize that.

HEARING EXAMINER ENGLE: Mr. Westerfield?

MR. WESTERFIELD: I'll withdraw, Your Honor.

HEARING EXAMINER ENGLE: Any other questions, gentlemen, for Mr. Opperlee?

MR. GALLO: I have no other questions.

HEARING EXAMINER ENGLE: Now, is Mr. Opperlee a witness with regard to any other charges, Mr. Gallo? He's not on my list if he is, but I thought I'd ask.

MR. GALLO: No, he is not.

HEARING EXAMINER ENGLE: Okay. Then we'll thank Mr. Opperlee for his testimony and excuse him from the stand. Thank you, Mr. Opperlee. We'll go off the record momentarily. (OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record.

MR. WESTERFIELD: Your Honor, may I have Mr. Scott

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MR. WESTERFIELD: (cont'd) testify briefly on 7b, and then that will conclude my evidence on that charge?

HEARING EXAMINER ENGLE: Fine. Mr. Scott?

MR. SCOTT: I deny the allegation that on 1/18/94 I consumed Southern Comfort alcoholic beverages.

MR. WESTERFIELD: Do you have any idea why Mr. Opperlee would say that?

MR. SCOTT: Only what I can assume, and it's over him being distressed of my mother — his mother and myself dating and him making the statements that if things didn't go the way he wanted to, which was for his mother and me to stop dating, that he would do something to fix it so that it worked out that way. And I'm not saying that — I don't know why he would say this other than I'm just imagining. That's what I took his statement to mean when he says if the relationship doesn't stop, he would do something to have me put back in jail.

MR. WESTERFIELD: No other questions.

MR. GALLO: I have one question. The charge is on or about 1/18/94. Is it possible you drank the Southern Comfort on another day?

MR. SCOTT: No, it's not. I never consumed any alcoholic beverages per se. The only alcohol I consumed since my release has

been a prescription cough medicine. I had that checked out through the pharmacy. It was a prescription, and

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MR. SCOTT: (cont'd) when you were — asked me about my one urine, I did, in fact, have someone go to the pharmacy and find out from him if there was alcohol in that cough medicine. And I think I've already told you I consumed alcohol on two occasions. I was given two bottles of that. I've already admitted that I consumed alcohol in that cough medicine.

MR. GALLO: No further questions.

MR. SCOTT: I would like to state — can I say something else?

HEARING EXAMINER ENGLE: You better check with your attorney.

MR. SCOTT: It's about alcohol.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record.

MR. SCOTT: I requested on several occasions to Mr. Gallo that if there is any question of me drinking alcohol that I be placed on Antabuse which is a medication that alcoholics take, and it makes

them violently ill if they do take medicine.

HEARING EXAMINER ENGLE: We know what Antabuse does.

MR. SCOTT: I requested that on several occasions and was told that it's not necessary and I don't believe in it. But, you know, that was — you know, if they had fears that I was going to be drinking, I willingly wanted to be placed on

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MR. SCOTT: (cont'd) this medicine. That was a condition that I set for myself.

HEARING EXAMINER ENGLE: Okay. Gentlemen, let's move now to 5b, count C. Do you have a witness?

MR. GALLO: Yes, I have.

HEARING EXAMINER ENGLE: We'll go off the record pending arrival of the witness.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record. The witness is in the hearing room. Sir, would you state your name for the record please?

MR. MUNDRO: Larry Mundro, M-u-n-d-r-o, Parole Supervisor, Scranton District Office.

HEARING EXAMINER ENGLE: You may remain seated, Mr. Mundro. Would you raise your right hand please? Mr. Mundro, do you swear the testimony you give at this hearing to be the truth, the whole truth, and nothing but the truth so help you?

MR. MUNDRO: I do.

HEARING EXAMINER ENGLE: Thank you. Your witness, Mr. Gallo.

MR. GALLO: Mr. Mundro, did you participate in the arrest and. . .

HEARING EXAMINER ENGLE: Counsel. . .

MR. WESTERFIELD: Your Honor, this testimony is

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MR. WESTERFIELD: (cont'd) going to - - preliminary parts of it - - be about a search which Mr. Mundro conducted at the residence where Mr. Scott was staying. And there is a question about the search, how they got to search the building, and I'd like to raise that. And how should we do that? At what point in the proceedings?

HEARING EXAMINER ENGLE: Well, let's do it now, Mr.

Westerfield.

MR. WESTERFIELD: Your Honor, if I can - - I believe Mr. Mundro's testimony will be that he went to the residence where Mr. Scott was staying and that he had taken a key from Mr. Scott and gave the key to Mrs. Hahn and told her to open the door; and that after some urging, she did that, and the agents then went in and found things that shouldn't have been there according to the agents. Mrs. Hahn had no authority to open the door to the house.

HEARING EXAMINER ENGLE: Who owned the house?

MR. SCOTT: My mother.

MR. WESTERFIELD: (INAUDIBLE)house. Mr. and Mrs. McDaniel owned the house. That's Mr. Scott's mother and father.

HEARING EXAMINER ENGLE: And so you're suggesting that Mr. Mundro was there. . .

MR. WESTERFIELD: Yes.

HEARING EXAMINER ENGLE: . . . with Mr. Scott?

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MR. WESTERFIELD: No, no, with Mrs. Hahn.

HEARING EXAMINER ENGLE: Mrs. Hahn.

MR. WESTERFIELD: And a key that had been taken from Mr. Scott at the time of Mr. Scott's arrest very shortly before that - - about a half hour. . .

HEARING EXAMINER ENGLE: Oh, so Mr. Mundro brought the key with him?

MR. WESTERFIELD: Correct. Then gave the key to Mrs. Hahn and told her to open the house. She's here to testify about that exchange, and ultimately she relented and opened the house, and the agents then went in.

HEARING EXAMINER ENGLE: Are you suggesting something here, Mr. Westerfield? I'm sure you can articulate it.

MR. WESTERFIELD: That there was no consent from anybody - - who had the right to consent to that search.

HEARING EXAMINER ENGLE: I thought you could. Well, you conducted the search, right, Mr. Mundro?

MR. MUNDRO: Yes, I did.

HEARING EXAMINER ENGLE: Okay. I'm going to hear arguments on the search issue at this point. You've heard what Mr. Westerfield is suggesting.

MR. MUNDRO: Yes. I'd like to point out that after securing the key from Mr. Scott, I asked Mrs. Hahn to accompany us to his approved residence.

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HEARING EXAMINER ENGLE: His meaning Mr. Scott?

MR. MUNDRO: Mr. Scott's approved residence which was a short distance - - five minute drive from the diner where he was arrested. She agreed to accompany us. She agreed to drive Mr. Scott's pickup truck from the diner. Mr. Scott did not want to leave his pickup truck at the diner. None of us were willing to drive the truck. She said she'd drive it. We followed her to the - - Mr. Scott's home. Upon arriving at the home, I gave Mrs. Hahn the key. She unlocked the kitchen door. As soon as we entered - - and prior to entering the home, I asked her if she would please call Mr. Scott's mother who was working at the time. She agreed to that. As soon as we entered the home, she called Mrs. Scott at her job, I assume.

HEARING EXAMINER ENGLE: Mrs. Scott?

MR. GALLO: This is Mrs. McDaniel.

MR. MUNDRO: Oh, I'm sorry.

HEARING EXAMINER ENGLE: Mrs. McDaniel who is Mr. Scott's mother and who is owner of the residence. . .

MR. MUNDRO: Yes.

HEARING EXAMINER ENGLE: . . . where the telephone's being used?

MR. MUNDRO: Correct. So after Mrs. Hahn made the telephone call, I instructed all of the agents to remain in the kitchen and await her arrival. When she arrived in the kitchen. . .

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HEARING EXAMINER ENGLE: Who is she?

MR. MUNDRO: That is Mr. Scott's mother. I explained to her that we were going to search Mr. Scott's room. I asked her where that room was. She hesitated to tell me where the room was. I said we are going to go upstairs, and we're going to search his room. We will find it if we need to at which point she escorted us upstairs and pointed out Mr. Scott's bedroom. I just want to make it clear that at no time was there any search of any kind until she arrived on the scene. And I did not want to ask Mr. Scott's mother to meet us at the residence for fear there was any contraband of any type in the home - - I did not want to

have any of that contraband removed prior to us arriving at the residence. So this is why I asked Mrs. Hahn to unlock the door, then call Mr. Scott's mother. And we awaited her arrival and then commenced our search after she arrived.

MR. WESTERFIELD: I don't think there's any testimony yet about anybody consenting to the search.

HEARING EXAMINER ENGLE: Go ahead, Mr. Westerfield.

MR. WESTERFIELD: And if there was consent, the alleged contraband was not found in the room that Agent Mundro has referred to.

HEARING EXAMINER ENGLE: Well, let's not get in

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HEARING EXAMINER ENGLE: (cont'd) there yet. I don't think we are in there yet. Mr. Mundro, would you explain for the benefit of this hearing record what your legal responsibilities are and what legal guidelines are established for you to conduct a search?

MR. MUNDRO: Yes. Any individual under the supervision of the Pennsylvania Board of Probation and Parole can have his residence searched by representatives of the Board with or without the

homeowner's permission if this is the parolee or probationer's approved residence. I was merely informing Mr. Scott's mother that we were going to search, and I asked her to please show us where his bedroom was. We also have the right to search any common living areas in the residence.

HEARING EXAMINER ENGLE: What was the purpose of the search, Mr. Mundro?

MR. MUNDRO: The purpose of the search was to attempt to locate any firearms that may have been in the home?

HEARING EXAMINER ENGLE: So you knew before you got there you were looking for - - when you say contraband, you mean firearms specifically?

MR. MUNDRO: Firearms specifically.

HEARING EXAMINER ENGLE: Mr. Westerfield?

MR. WESTERFIELD: I have no questions.

HEARING EXAMINER ENGLE: Off the record.

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HEARING EXAMINER ENGLE: We're back on the record. Mr. Westerfield, we're still on the issue of search. Do you have any

other comments before we decide?

MR. WESTERFIELD: Only that even if the agents have the right to search an approved residence of a probationary that they don't have the right to have someone other than an occupant of the house - - to require someone other than an occupant of the house to let them in as they did with Mrs. Hahn in this case. And by the time Mrs. McDaniel arrived, things were really over because they were already in the house. As Agent Mundro has quite clearly stated, he didn't ask for permission to search. He told her he was going to search and just asked where Mr. Scott's room was so technically he'd know where to start. So there was no - - I take it that he's not alleging that there was consent. He's saying that they were going to do it one way or the other and . . .

HEARING EXAMINER ENGLE: I think that's his position.

MR. WESTERFIELD: Yeah. And I think that they have to get consent, and they did not get consent.

HEARING EXAMINER ENGLE: The issue is on the record. My finding regarding this issue is that there were - - that the consent - - that the search (INAUDIBLE) was a bit unusual but within

requirements so established for consent by

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HEARING EXAMINER ENGLE: (cont'd) residences of parolees by parole agents and the Commonwealth. So let's go forward having resolved the issue of search. Your witness, Mr. Gallo.

MR. GALLO: Mr. Mundro, you did participate in the arrest and then the following search of Mr. Scott's approved residence. Is that correct?

MR. MUNDRO: Yes, I did. Yes.

MR. GALLO: Okay. When you searched the approved residence, did you search every room in the house?

MR. MUNDRO: No, I did not.

MR. GALLO: Okay. Which rooms were searched?

MR. MUNDRO: I searched a room which was adjacent to what I was told was Mr. Scott's bedroom. It contained two small sofas, and there was an ironing board in between the two sofas. There was also a television set at the far end of the room, and to your immediate right as you entered the room, there was a closet. And as you entered this bedroom - - this room, if you did not enter this room, if you made an

immediate left, you would enter Mr. Scott's bedroom.

MR. GALLO: Was there a door to his room?

MR. MUNDRO: Yes, there was.

MR. GALLO: Was the door locked?

MR. MUNDRO: No.

MR. GALLO: Was it open?

MR. MUNDRO: Yes, it was.

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MR. GALLO: Did anybody in the residence tell you what this room was used for?

MR. MUNDRO: No. At the time I began searching this particular room, Mr. Scott's mother had returned I believe at least to the kitchen, and I believe she may have been speaking with you at that time.

MR. GALLO: Would you tell us what, if anything, you found in his room?

MR. MUNDRO: Under the sofa which was on the left side of the room as you entered the door, I found - - let's see - - five guns one of which was a Mostberg (ph) .12 gauge pump shotgun, serial number

G, as in George, 878391. This particular shotgun was laying on the floor under the sofa, and it was in a shotgun case - - a zippered case. The other weapons one of which was a Glenfield .12 gauge bolt-action, serial number 71357747; also a Stevens .12 gauge shotgun with no serial number; a Harrington-Richardson .12 gauge single barrel shotgun, serial number 918060; and a Glenfield .22 caliber semiautomatic rifle, model 60, serial number 23506068 - - all of those guns, as I said, with the exception of the Mostberg .12 gauge pump, were wrapped in a white cloth, and there was tape around the white cloth. And then the rifles were also in plastic bags which were also taped. Those were on the floor under the sofa directly next to the .12 gauge which, as I said, was in the zippered case. Also, after I found these rifles,

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MR. MUNDRO: (cont'd) after searching the closet which was in the same room, I found the green camouflage-colored compound bow and three arrows.

MR. GALLO: These weapons - - you say they were under the couch?

MR. MUNDRO: Correct.

MR. GALLO: Were they concealed under the couch? Well, how was the couch? Was the couch against the wall?

MR. MUNDRO: Correct.

MR. GALLO: Were the guns at the far end against the wall, or were they in the front part of the couch?

MR. MUNDRO: They were in the front part and actually towards the - - if you're facing the sofa, the left end so then closer to the doorway.

MR. GALLO: These guns - - they were returned to your office?

MR. MUNDRO: Correct.

MR. GALLO: And we have the guns in our possession?

MR. MUNDRO: They're all in the evidence locker at the Santress (ph) Building.

MR. GALLO: Did you interview Mrs. McDaniels about these guns as to their ownership or to. . .

MR. MUNDRO: Yes.

MR. GALLO: . . . who had access to them?

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MR. MUNDRO: After uncovering all of the firearms, I

explained to her that given the fact they were in the residence and accessible in my opinion to Mr. Scott that we would be confiscating all of them. I explained to her that she would be given a receipt which would contain a description and a serial number if there was one available of each of the weapons. After advising her of that, she indicated that none of the guns belonged to her son and that they all belonged to her husband.

MR. GALLO: I have no further questions.

MR. WESTERFIELD: Was there any evidence that any of the guns had been recently fired?

MR. MUNDRO: I couldn't tell you if they were.

MR. WESTERFIELD: Did you look at them?

MR. MUNDRO: Yes.

MR. WESTERFIELD: Can you tell if a shotgun's been fired recently?

MR. MUNDRO: Yes. I didn't look down the barrels of the weapons. I just unpacked them (INAUDIBLE).

MR. WESTERFIELD: Did you check to see if they were loaded?

MR. MUNDRO: Correct. Yes. I worked the actions of all of

them to be sure there was no ammunition, and there was no ammunition in any of them.

MR. WESTERFIELD: Okay. Well, a single-shot

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MR. WESTERFIELD: (cont'd) shotgun, don't you kind of have to look down the barrel to see if there's anything in it?

MR. MUNDRO: Yeah. Well, just the breech. I didn't hold it up to the light to see if there was any powder in the barrel itself.

MR. WESTERFIELD: I take it that these were all long guns, no handguns?

MR. MUNDRO: Correct.

MR. WESTERFIELD: Did the four that were - - you said that four of them were wrapped in white cloth?

MR. MUNDRO: Correct.

MR. WESTERFIELD: And then taped?

MR. MUNDRO: Correct.

MR. WESTERFIELD: With what kind of material were they taped?

MR. MUNDRO: As I recall, I think it was electrical tape. I don't know if it was black.

MR. WESTERFIELD: And were they oiled - - appear to have been oiled before they were wrapped up in this white cloth?

MR. MUNDRO: They may have been, but they weren't oily when I removed them from the white cloth.

MR. WESTERFIELD: Did you find any ammunition?

MR. MUNDRO: No.

MR. WESTERFIELD: And the one shotgun you

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MR. WESTERFIELD: (cont'd) testified was in a zippered case like someone might use to carry a shotgun to and from hunting?

MR. MUNDRO: Correct.

MR. WESTERFIELD: Did you know where to look for these guns?

MR. MUNDRO: No.

MR. WESTERFIELD: Did the couch under which they were located - - was the area under the couch visible, or did the couch have a skirt or material around the sides of it?

MR. MUNDRO: I don't recall. It might have. I don't recall being able to see them when I entered the room, but as I testified earlier, they were very close to the front of the sofa - - probably eight

to ten inches, I'm just guessing, at the most maybe a foot, from the front of the sofa.

MR. WESTERFIELD: Had you been advised by someone that there were these shotguns and rifles in the house?

MR. MUNDRO: As speaking with Mr. Gallo prior to making the arrest of Mr. Scott, he indicated that there may be firearms in the home. I don't recall that we discussed specifically what types of firearms we might find, but we definitely did discuss the fact that there may be some in the home.

MR. WESTERFIELD: So you don't know the source of the information that there might be some firearms in the home?

MR. MUNDRO: I don't recall. We may have

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MR. MUNDRO: (cont'd) discussed that prior to the arrest.

MR. WESTERFIELD: No other questions.

HEARING EXAMINER ENGLE: Any other questions for this witness, Mr. Gallo, before . . .

MR. GALLO: I have no further questions.

HEARING EXAMINER ENGLE: Thank you, Mr. Mundro.

You may be excused. Mr. Mundro's not going to testify to anything else now, is he?

MR. GALLO: No, no.

HEARING EXAMINER ENGLE: You can stay in the hearing room if you want, Mr. Mundro. Okay. Now, let's see what is left here. Let's look to Mr. Westerfield and find out if Mr. Scott or any other witnesses he may wish to call. Do you have another witness?

MR. GALLO: I have an Agent Dunham that I would like to have testify. He'll be testifying to the fact that. . .

HEARING EXAMINER ENGLE: Concerning count C here, the guns in the house?

MR. GALLO: No. He's going to testify that Mr. Scott admitted to him that he was drinking (INAUDIBLE).

HEARING EXAMINER ENGLE: Oh, okay. No, let's do 5b, count C first. Now, Mr. Westerfield, do you have any witnesses you want to call regarding that, or does Mr. Scott want to make any statement?

MR. WESTERFIELD: Well, I would like to have Mr.

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MR. WESTERFIELD: (cont'd) Scott make a statement, but I'd like to have Mr. McDaniel testify about. . .

HEARING EXAMINER ENGLE: That would be fine.

MR. WESTERFIELD: Both on talking about 5b-c.

MR. GALLO: 5c?

MR. WESTERFIELD: Yeah. From the time you were paroled, were you aware that there were any firearms in the house in which you were living?

MR. SCOTT: No, I wasn't.

MR. WESTERFIELD: Do you know whose firearms those were?

MR. SCOTT: They were my dad's.

MR. WESTERFIELD: Your stepfather?

MR. SCOTT: Right.

MR. WESTERFIELD: From the time you were paroled, you said you weren't aware they were there so I guess you didn't use them if you weren't aware they were there?

MR. SCOTT: No. I'd like to say that when I went through my parole classes over in the academic building that I told my mom that dad would have to get rid of all the guns in order for me to come

home, and my mom said that she told him, that he took care of it. As a matter of fact, she said that he took the gun cabinet - - all the guns from the gun cabinet and changed it into a curio for holding beer steins. I had no - - I imagined that his guns were gone because that's where they were

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MR. SCOTT: (cont'd) always kept - - in the gun cabinet.

MR. WESTERFIELD: So prior to your going into prison originally some years ago, those firearms were kept in a cabinet with a glass front where you could see them?

MR. SCOTT: Yeah.

MR. WESTERFIELD: And when you went out on your parole, you saw that cabinet wasn't a gun cabinet anymore?

MR. SCOTT: No. It holds all those beer steins.

MR. GALLO: I have questions. Regarding the room the guns were found in, what is that room used for? What is the purpose of that room?

MR. SCOTT: It's my mother's private sitting area. I'm not allowed in the room. I have - - I don't even - - to my knowledge, I've never

seen my father in that room either.

MR. GALLO: How close is that to your room?

MR. SCOTT: It's the next room over from mine.

MR. GALLO: Do you have to pass that room to get to your room?

MR. SCOTT: No, you don't.

MR. GALLO: Is that door always locked or unlocked or. . .

MR. SCOTT: I never really pay much attention to it. I mean, to my knowledge, I know it's open because I see the ironing board there all the time. When I'd come home at night, my mom would be watching TV in there by herself.

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MR. GALLO: No further questions.

MR. WESTERFIELD: Should I have Mr. McDaniel testify now?

HEARING EXAMINER ENGLE: Let's go off the record. (OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record. The witness has entered the hearing room. Sir, I ask you to state your full name for the record please?

MR. MCDANIEL: John McDaniel.

HEARING EXAMINER ENGLE: Sir?

MR. MCDANIEL: John McDaniel.

HEARING EXAMINER ENGLE: Would you spell your last name please?

MR. MCDANIEL: M-c-D-a-n-i-e-l.

HEARING EXAMINER ENGLE: And your address, Mr. McDaniel?

MR. MCDANIEL: R.D. 1, Box 307A, Effort, Pennsylvania.

HEARING EXAMINER ENGLE: The town again please?

MR. MCDANIEL: Effort, E-f-f-o-r-t.

HEARING EXAMINER ENGLE: You may remain seated, Mr. McDaniel. Would you raise your right hand please? Mr. McDaniel, do you swear any testimony you give at this hearing to be the truth, the whole truth, and nothing but the truth so help you?

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MR. MCDANIEL: I will.

HEARING EXAMINER ENGLE: Thank you. Your witness, Mr. Westerfield.

MR. WESTERFIELD: Mr. McDaniel, you're Keith's stepfather?

MR. MCDANIEL: Yes.

MR. WESTERFIELD: And for how long have you been married to Mrs. McDaniel?

MR. MCDANIEL: 1978.

MR. WESTERFIELD: And how are you employed?

MR. MCDANIEL: Port Authority (INAUDIBLE).

MR. WESTERFIELD: What's your job with the Port Authority?

MR. MCDANIEL: Supervisor of the railroad.

MR. WESTERFIELD: Now, in addition to being married to Mr. Scott's mother, you resided from the time Mr. Scott was paroled until he was arrested for the parole violation in the same house with him?

MR. MCDANIEL: Yes.

MR. WESTERFIELD: And in addition to yourself and Mr. Scott, your wife, Mr. Scott's mother, lived in the house. Right? And there were just the three of you living in the house?

MR. MCDANIEL: Right.

MR. WESTERFIELD: Now, there's been - - you weren't

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MR. WESTERFIELD: (cont'd) in the room, but the last witness

testified to finding five long guns under a couch in a room in that house and also finding a bow and arrow-type bow in a closet and three arrows in the same closet. Do you know who owned any of those items?

MR. MCDANIEL: Yeah. They were mine.

MR. WESTERFIELD: The guns, according to the testimony, were - - one shotgun was in a zippered gun case, and the four other long guns were wrapped in a white cloth material and then taped. Do you agree that that's the way - - the condition they were in?

MR. MCDANIEL: Yes, in plastic bags.

MR. WESTERFIELD: And in plastic bags. Okay. Where or had you put those guns in - - well, let's take the guns first - - somewhere within the house?

MR. MCDANIEL: Yeah. I put them underneath the couch - - (INAUDIBLE) underneath the couch so I could get them out of there.

MR. WESTERFIELD: Okay. And was that a couch that one could look under when you came into the room?

MR. MCDANIEL: No.

MR. WESTERFIELD: Did it have material down to the floor?

MR. MCDANIEL: It was draped. It had a cover overtop of it. It was draped to the floor.

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MR. WESTERFIELD: Okay. Was Keith aware that those guns were in the house?

MR. MCDANIEL: No.

MR. WESTERFIELD: Was he aware that the bow was in the house?

MR. MCDANIEL: I don't know if he was or not. I didn't know a bow was a problem. I had the bow in my closet in there.

MR. WESTERFIELD: Where had the guns been stored when Keith last lived at the house?

MR. MCDANIEL: In the gun cabinet.

MR. WESTERFIELD: And had you taken them from the gun cabinet and converted that to some other use?

MR. MCDANIEL: Right. I changed it into a storage for beer steins. I collect beer steins.

MR. WESTERFIELD: Did you have some plans for these long guns within a short time after they were seized?

MR. MCDANIEL: Yeah. My brother was coming down from

New York. We were going on vacation together, and he was supposed to take them back with him because I understood they weren't supposed to be available to Keith. The only way I could get rid of them was give them away, and I didn't want to give them to anybody that I didn't know so my brother was going to take them for me.

MR. WESTERFIELD: You were aware that these

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MR. WESTERFIELD: (cont'd) firearms were supposed to be out of the house?

MR. MCDANIEL: Well, the way I understood it was supposed to be - - he wasn't supposed to have contact or be able to get to them so I didn't want to just throw them away. When I found out that he - - my wife told me that the guns - - we're not allowed - - you know, we weren't supposed to have guns, that's when I wrapped them up and got rid of them - - (INAUDIBLE) got rid of them.

MR. WESTERFIELD: And when was your brother due to pick them up? How long after they were seized?

MR. MCDANIEL: We were leaving February 28 or - - yeah, I believe February 28 for vacation.

MR. WESTERFIELD: Did someone at some point ask you whether your shotguns and rifles were still at your house?

MR. MCDANIEL: Yeah. Ray had asked me one time. He says . . .

MR. WESTERFIELD: Ray Opperlee?

MR. MCDANIEL: Right. "You didn't really get rid of your guns, did you?" because I had told Keith I just threw them away or got rid of them. And I says, "No, I got to - - you know, I'm going to get rid of them and give them to my brother." He knew they were in the house.

MR. WESTERFIELD: Okay. I have no other questions.

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MR. GALLO: Mr. McDaniel, you say your brother was going to come and take the guns on the 28th of February?

MR. MCDANIEL: When we got back from Mexico, yes.

MR. GALLO: And your stepson was released on September the 9th - - the 1st, 1994. That's how many months - - that's five months they'd been in your house that long?

MR. MCDANIEL: Yeah.

MR. GALLO: Would you describe the upstairs to us please?

MR. MCDANIEL: Okay. If you go up the steps and you make a right, that's the master bedroom. That's where me and my wife stay. If you turn to the left, there's a - - the first door on the left there is a - - where Keith's bedroom was. And if you went straight ahead, there was a small sitting room that my wife used.

MR. GALLO: Was this exclusively your wife's room? Were you allowed in there? Was anybody in the family allowed to go in there?

MR. MCDANIEL: My wife used it during the evening when it was time for me to go to bed so she could watch television.

MR. GALLO: Was Keith or you allowed in there? Was that. . .

MR. MCDANIEL: Oh, I was allowed in there. Yeah.

MR. GALLO: How about Keith? Was he allowed to go

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MR. GALLO:(cont'd) in there?

MR. MCDANIEL: He had no business in there.

MR. GALLO: But was there anything that said - - did anybody tell him he's not allowed in that room or anything like that?

MR. MCDANIEL: No.

MR. GALLO: Okay. I have no further questions.

MR. WESTERFIELD: Whether he was allowed to or not, was it a room that he went into? Did you ever see him in there?

MR. MCDANIEL: No, never. He had his own room. He had his own television. He had the downstairs. He had a larger television. And this was a room exclusively used by my wife to watch television because she didn't want to sit downstairs by herself.

MR. WESTERFIELD: Did that use of the room have anything to do with why you chose that as a place to hide these guns until you can get them out of the house?

MR. MCDANIEL: Well, I figured it was - - who would go in there, you know? Who would look underneath the couch?

MR. WESTERFIELD: Other than parole officers?

MR. MCDANIEL: Well, yeah.

MR. WESTERFIELD: Okay, Mr. McDaniel, thank you.

MR. GALLO: I have one more question. Were there periods of time when Keith would be at home alone with nobody

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MR. GALLO: (cont'd) there with him?

MR. MCDANIEL: He could. Not often.

MR. GALLO: But he would be alone?

MR. MCDANIEL: (INAUDIBLE).

MR. GALLO: And you didn't keep this door locked, did you? Was this door locked?

MR. MCDANIEL: No.

MR. GALLO: No further questions.

MR. WESTERFIELD: May I have one moment? [Pause] Was there any ammunition with these guns?

MR. MCDANIEL: No, none whatsoever.

MR. GALLO: I have a question. Do you have any ammunition in the house?

MR. MCDANIEL: No.

MR. WESTERFIELD: None at all?

MR. MCDANIEL: None at all. Nowhere.

MR. WESTERFIELD: Nothing else, Your Honor.

MR. GALLO: I have one more question. As far as the bow and arrow, there were arrows there. You had three arrows in the house. They were with the bow. Is that correct?

MR. MCDANIEL: Uh-huh. But I didn't know what condition they were in.

MR. GALLO: (INAUDIBLE).

HEARING EXAMINER ENGLE: Thank you, Mr. McDaniel, for your willingness to testify today. You may be excused.

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(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're on the record.

MR. WESTERFIELD: Mr. Gallo, did you give Mr. Scott a urinalysis test of any kind while he was on parole?

MR. GALLO: Yes, I did.

MR. WESTERFIELD: And when was that?

HEARING EXAMINER ENGLE: Relevance, counsel?

MR. GALLO: I don't have a copy of the . . .

HEARING EXAMINER ENGLE: Just a second, Mr. Gallo. What's the relevance?

MR. WESTERFIELD: Consumption of alcohol.

HEARING EXAMINER ENGLE: Did you ever test Mr. Scott for the consumption of alcohol, Mr. Gallo?

MR. GALLO: No sir.

MR. WESTERFIELD: Okay. You never tested him for consumption of alcohol? The test was purely a drug screen?

MR. GALLO: It was a drug screen.

MR. WESTERFIELD: When you arrested him in February . . .

HEARING EXAMINER ENGLE: What are we talking about here, Mr. Westerfield? What condition?

MR. WESTERFIELD: 7a and b, Your Honor.

HEARING EXAMINER ENGLE: Well, generally 7a and b?

MR. WESTERFIELD: Yes, sir.

HEARING EXAMINER ENGLE: Well, we haven't heard

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HEARING EXAMINER ENGLE: (cont'd) what the State has to say on 7a. We have heard the State's witnesses on 7b.

MR. WESTERFIELD: Yeah. I was under the impression that the State's only evidence on 7a was Mr. Hahn's Affidavit, Your Honor.

HEARING EXAMINER ENGLE: Is that correct?

MR. GALLO: I have Mr. Hahn, but I also have a state agent that will testify that Mr. Scott admitted to him that he was drinking al ohol.

HEARING EXAMINER ENGLE: Well, let's call the state agent. We'll deal with 7a, and then we'll give you your opportunity to - - off the record.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record. The fourth State's witness has entered the hearing room. Would you state your full name, sir, for the record please?

MR. DUNHAM: Loren Milo Dunham.

HEARING EXAMINER ENGLE: Would you spell your last name please, Mr. Dunham?

MR. DUNHAM: D-u-n-h-a-m.

HEARING EXAMINER ENGLE: And I understood Mr. Gallo to say you're an employee of the State Parole Board?

MR. DUNHAM: That's correct.

HEARING EXAMINER ENGLE: And you're what? A parole agent?

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MR. DUNHAM: I am a parole agent.

HEARING EXAMINER ENGLE: And your headquarters are?

MR. DUNHAM: Scranton District.

HEARING EXAMINER ENGLE: Mr. Dunham, you may remain seated. Would you raise your right hand please? Do you swear any testimony you give at this hearing to be the truth, the whole truth, and nothing but the truth so help you?

MR. DUNHAM: I do.

HEARING EXAMINER ENGLE: Thank you. Your witness, Mr. Gallo.

MR. GALLO: Mr. Dunham, on 2/4/1994, did you participate in the arrest of Keith Scott?

MR. DUNHAM: Yes, I did.

MR. GALLO: After Keith Scott was taken into custody, were you ordered to transport him to a Monroe County Prison?

MR. DUNHAM: I was assigned as a transport officer. Yes.

MR. GALLO: En route to Monroe County Prison, did Mr. Scott make any statements to you?

MR. WESTERFIELD: Your Honor . . .

MR. GALLO: I'm just asking him if he made a statement.

MR. WESTERFIELD: Yeah. I take it this is going

MR. WESTERFIELD: (cont'd) to be something incriminating, and since we're talking about Mr. Scott in custody and an agent of the State doing the testifying, could we do some questions about warnings and what Mr. Scott was warned before being asked questions?

HEARING EXAMINER ENGLE: I think Mr. Westerfield would like to know, Mr. Dunham, whether or not Mr. Scott was advised of his Miranda warnings?

MR. DUNHAM: He was not.

MR. WESTERFIELD: I'd object to any testimony about any statements by Mr. Scott after he was under arrest, Your Honor.

HEARING EXAMINER ENGLE: Mr. Dunham, what is your understanding of a parole agent's requirements regarding the Miranda warnings?

MR. DUNHAM: Miranda warnings is - - my understanding Miranda warnings is given in cases of criminal charges. We were not charging Mr. Scott criminally so it was not necessary.

HEARING EXAMINER ENGLE: Your objection's noted for the

record but overruled, counsel.

MR. WESTERFIELD: Thank you, Your Honor.

HEARING EXAMINER ENGLE: En route to where Mr. Dunham?

MR. DUNHAM: We were en route to the prison of

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MR. DUNHAM: (cont'd) Monroe County.

MR. GALLO: Mr. Dunham, did Mr. Scott make a statement to you while you were en route to Monroe County Prison?

MR. DUNHAM: He made a generalized statement to two agents, myself and a supervisor in the car, that he had been drinking while he was on parole.

MR. WESTERFIELD: Objection, Your Honor. That's irrelevant to any of the specific charges here.

HEARING EXAMINER ENGLE: You're — I assume — just a second, Mr. Gallo. Let me ask a question. I want this record to be clear. I assume that you're addressing the issue here of an alleged violation of condition 7a which on the Notice of Charges that Mr. Scott would have received says, "On or about September 2, 1993, you

consumed Zimbuck (ph) clear malt alcoholic beverages." Is that correct?

MR. GALLO: Correct.

HEARING EXAMINER ENGLE: Continue, Mr. Gallo.

MR. GALLO: Mr. Dunham, did Mr. Scott testify to approximately what time period that this was consumed — that alcohol was consumed?

MR. DUNHAM: I really don't recall.

MR. GALLO: No further questions.

HEARING EXAMINER ENGLE: Mr. Westerfield?

MR. WESTERFIELD: My objection, Your Honor, about

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MR. WESTERFIELD: (cont'd) not being relevant to any of the charges that are before you.

HEARING EXAMINER ENGLE: Well, I'm going to overrule that objection, but I fail to see the relevancy of the testimony to any violations which may or may not have occurred on September 9, 1992, or September 2, 1992.

MR. GALLO: Well, Your Honor, the charge is on or about, and it

covers — on or about could cover a certain period, and the client has admitted to drinking alcohol, but it doesn't say specifically 9/2/93 or 1/18/94. It just says on or about, and the client did admit to consuming alcohol, and I think that should go to showing that he was drinking while on parole.

MR. SCOTT: May I say something?

HEARING EXAMINER ENGLE: On or about's a very interesting term, Mr. Gallo, and I don't think that ought to be used for you or other parole agents to go fishing. I think on or about to me means if he wasn't September the 2nd, 1993, it was 12:59 a.m. on September the 1st or perhaps 12:02 on the 3rd. I'm still going to overrule counsel's objection as to relevancy, but I'll take the testimony — I'll give weight to testimony for what it's worth.

MR. GALLO: Thank you, Your Honor.

HEARING EXAMINER ENGLE: Counsel?

MR. WESTERFIELD: I have no questions for this

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MR. WESTERFIELD: (cont'd) witness then, Your Honor.

HEARING EXAMINER ENGLE: Are there any other questions

concerning either of these two conditions? We've dealt with A. We're finished with B as to this witness testifying?

MR. GALLO: Mr. Dunham, you and the client discussed no other technical parole violations. Is that correct?

MR. DUNHAM: No, we did not.

MR. GALLO: Okay. No further questions.

HEARING EXAMINER ENGLE: Okay. You don't have any questions for the witness, do you?

MR. WESTERFIELD: No, I don't but I'd like to have Mr. Scott testify to one or two questions in response to this testimony.

HEARING EXAMINER ENGLE: Okay. He's not going to be called to testify again?

MR. GALLO: No.

HEARING EXAMINER ENGLE: You can remain in the hearing room too. Now, before I give you an opportunity to do that, counsel, I have a question here. [Pause] Mr. Gallo . . .

MR. GALLO: Yes, sir.

HEARING EXAMINER ENGLE: . . . my notes indicate that the only testimony on this hearing record so far concerning condition 7a

is whatever testimony that you got from Agent

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HEARING EXAMINER ENGLE: (cont'd) Dunham. If you have anything further, let's get it on the record before we . . .

MR. GALLO: I have no further information. Mr. Hahn did address that in the Affidavit. Didn't Mr. Hahn address that question when he was in here?

HEARING EXAMINER ENGLE: The Affidavit does.

MR. WESTERFIELD: Pardon?

HEARING EXAMINER ENGLE: The Affidavit does.

MR. GALLO: The Affidavit does, and we added that into evidence, and I would refer to that.

HEARING EXAMINER ENGLE: Counsel?

MR. WESTERFIELD: Shall I call Mr. Scott again — recall him?

HEARING EXAMINER ENGLE: Sure.

MR. WESTERFIELD: Okay. Keith, you remember driving after you were arrested February 2, and you heard Officer Dunham just testify . . .

(TAPE FOUR)

MR. SCOTT: I told him that I had consumed alcohol, but I never made the way they're making it sound like I told them I was drinking, getting drunk or — I never said that. I said, "Yes, I did consume alcohol."

MR. WESTERFIELD: Okay. I have no other questions then, Your Honor.

HEARING EXAMINER ENGLE: Mr. Gallo, any questions

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HEARING EXAMINER ENGLE: (cont'd) of Mr. Scott?

MR. GALLO: No. I have no questions. I think Mr. Scott answered . . .

HEARING EXAMINER ENGLE: Okay. And this is on 7a. Now, did you have some testimony generally on condition 7a or 7b, or was that it?

MR. WESTERFIELD: I have one witness on character which if you're willing to hearing him is Mr. Scott's AA sponsor.

HEARING EXAMINER ENGLE: Can you give us an offer — well, before we get to that, I don't think my notes deal other than testimony by — other than the Affidavit, the testimony by previous

witnesses specifically with condition 5c, was it your intent that testimony — Mr. Gallo, that the testimony of Mr. Opperlee covered condition 5c?

MR. GALLO: 5b-c?

HEARING EXAMINER ENGLE: The allegation is that in some fashion Mr. Scott has alleged to have engaged in assaultive behavior specifically according to Mr. Scott's notice that during September of 1993 he threatened a co-worker, Gerald Thomas, by approaching Mr. Thomas and asking, "I'm going to fucking kill you," numerous times.

MR. GALLO: If you recall Mr. Opperlee's testimony, he . . .

HEARING EXAMINER ENGLE: I recall the testimony. I'm asking . . .

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MR. GALLO: Yes, yes. That is our testimony, that he observed this assault on one Gerald Thomas.

HEARING EXAMINER ENGLE: Counsel?

MR. WESTERFIELD: Shall I move to dismiss, Your Honor?

HEARING EXAMINER ENGLE: Sir?

MR. WESTERFIELD: Shall I move to dismiss that charge?

HEARING EXAMINER ENGLE: I can't tell you what to do, Mr. Westerfield.

MR. WESTERFIELD: I do move to dismiss the charge, Your Honor.

HEARING EXAMINER ENGLE: Basis?

MR. WESTERFIELD: No testimony of any assault — words only.

MR. GALLO: That's not correct. I object to that. That's not correct. Mr. Opperlee did testify that he seen Mr. Scott with two hammers taped to his hand and also that he said he did say threats (INAUDIBLE), but Mr. Opperlee would not read the threatening words. So assault is not an attack on a person. The words themselves constitute an assault. Just the overt action of going towards him and arguing was an assault.

HEARING EXAMINER ENGLE: So the Parole Board's allegation here is that by virtue of the fact that testimony was Mr. Scott and Mr. Thomas were in — let's see what it says

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HEARING EXAMINER ENGLE: (cont'd) on here — Mr. Opperlee's testimony was that he was present when Mr. Scott threatened Mr. Thomas.

MR. GALLO: That's correct.

HEARING EXAMINER ENGLE: They were having a major disagreement. Mr. Scott had two hammers with him.

MR. GALLO: That constitutes the assault, sir. The hammers were taped to his hands. They were not used in an ordinary business.

MR. WESTERFIELD: Your Honor, assault — the common law definition is an offense of physical touching which there's no testimony. I believe these guys were on a masonry job so having a hammer — this is not like taking a hammer in church and threatening somebody.

HEARING EXAMINER ENGLE: I gather that . . .

MR. GALLO: Your Honor, I don't agree with that.

HEARING EXAMINER ENGLE: Wait a second, gentlemen. We're not going to argue the issue. I'll decide that later, but all I want to know from Mr. Westerfield is if he wants to have any witnesses or Mr. Scott address the issue of the assaultive behavior.

MR. WESTERFIELD: No. I don't want to offer any testimony on that, Your Honor.

HEARING EXAMINER ENGLE: Fine. Okay. Now, you were

about to do something, Mr. Westerfield.

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MR. WESTERFIELD: Offer character evidence, Your Honor, since I think you're going to do — assuming you (INAUDIBLE) the violation, you're going to recommend some appropriate remedy for the violation, I think some character evidence might be helpful if you're willing.

HEARING EXAMINER ENGLE: Thank you for your confidence, Mr. Westerfield, but can we have an offer of what the character's testimony might be?

MR. WESTERFIELD: That since Mr. Scott's parole, one of his conditions was to attend AA meetings, and in order to attend AA meetings, you have to have a sponsor. And the witness agreed to act as Mr. Scott's sponsor and as his sponsor had some fairly quite significant contact with him, interaction, talking at AA meetings, and soul bearing or what I gather they do at these meetings, and the witness's impression of Mr. Scott, and Mr. Scott's — the fact that Mr. Scott was making an honest effort to succeed on parole and abide by the AA . . .

HEARING EXAMINE ENGLE: I think we'll hear the witness. Normally . . .

MR. GALLO: Can I have the witness's name?

HEARING EXAMINER ENGLE: He's here on the list for — the witness's name, it's my understanding, is Donald Byrnes?

MR. WESTERFIELD: Yeah.

MR. GALLO: Before you call the witness may I —

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MR. GALLO: (cont'd) Your Honor, before you call the witness may I address what he had to say? I have something to say about that.

HEARING EXAMINER ENGLE: Well, we've just heard — Mr. Westerfield's offer was that if Mr. Byrnes testifies, it's going to be with regard to his relationship with Mr. Scott, his observations as Mr. Scott's AA sponsor concerning that issue. You'll have an opportunity to ask questions though. We'll go off the record till the witness is available.

(OFF THE RECORD)

HEARING EXAMINER ENGLE: We're back on the record, and

the witness is in the hearing room. Sir, could I ask you to state your full name and address for the record please?

MR. BYRNES: Don Byrnes, 44 Silver Valley Court, Saylorsburg, Pennsylvania, 18353.

HEARING EXAMINER ENGLE: Thank you, Mr. Byrnes. You may remain seated. Would you raise your right hand? Mr. Byrnes, do you swear the testimony you're about to give at this hearing to be the truth, the whole truth, and nothing but the truth so help you?

MR. BYRNES: I do.

HEARING EXAMINER ENGLE: Thank you. Mr. Westerfield?

MR. WESTERFIELD: Mr. Byrnes, you're acquainted with Keith Scott?

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MR. BYRNES: Yes, sir.

MR. WESTERFIELD: And when did you first meet him?

MR. BYRNES: The middle of January — somewhere in the middle. It could have been towards the beginning of January to the middle of January.

MR. WESTERFIELD: Of 1994?

MR. BYRNES: Yes, sir.

MR. WESTERFIELD: And in what context did you come to meet him?

MR. BYRNES: At an AA meeting.

MR. WESTERFIELD: Are you employed now?

MR. BYRNES: No. I'm retired.

MR. WESTERFIELD: Prior to retiring, what kind of work did you do?

MR. BYRNES: Law enforcement.

MR. WESTERFIELD: For what agency?

MR. BYRNES: MTA, New York — Metropolitan Transit.

MR. WESTERFIELD: Transit Authority police?

MR. BYRNES: Yes sir.

MR. WESTERFIELD: And were you active on the beat as it were a policeman?

MR. BYRNES: Yes.

MR. WESTERFIELD: And how long have you been retired from that?

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MR. BYRNES: Since October of '89.

MR. WESTERFIELD: And how long have you lived in the Saylorsburg area?

MR. BYRNES: A little better than five months.

MR. WESTERFIELD: So you met Mr. Scott at an AA meeting in January of 1994, and did you develop some relationship with him through AA?

MR. BYRNES: Yes, sir.

MR. WESTERFIELD: What was that?

MR. BYRNES: He came to the meeting, and he appeared to be distorted, you know, out of whack, but he wanted to stop drinking. He maintained some sobriety prior to coming to the meeting, and when I met him he was saying he had a hard time not drinking, you know. He wanted to pick up a drink, and the only way he knew how was to come to meetings. He was also told that he had to attend three meetings a week — at least three meetings a week, and also get a sponsor. I spoke to him that night for approximately three hours during and after the meeting. The following day I was in contact with him also. I gave Keith my home number, and he called me. And we

continued our one-on-one relationship with that. And on the third day when I saw him, his appearance and his attitude was a drastic change. I saw a tremendous change — unkempt, unshaven, not caring too much about himself to a functional human being, and he was looking to take care of his problem in the right way.

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MR. WESTERFIELD: And did you become his AA sponsor at some point?

MR. BYRNES: Yes, sir. He asked me to become his sponsor, and I agreed to it, and I would give freely what I would give to myself. I maintained — I just celebrated nine years of sobriety February 4.

MR. WESTERFIELD: From that time then that you first met Mr. Scott, did you see him at meetings?

MR. BYRNES: Yes. We went together, and after meetings, we would be at the diner or at my house, but there was always contact from that point on up until the night before we were at the Snydersville Diner, and the night after that or the day after that's when Keith was picked up.

MR. WESTERFIELD: How long had you been in AA?

MR. BYRNES: Nine years it was on February 4.

MR. WESTERFIELD: And from your conversations with Mr. Scott and your experience in AA, were you able to form an opinion as to whether Mr. Scott was making a good faith effort to comply — to go along with the program in progress through AA?

MR. BYRNES: Yes. He was very sincere.

MR. WESTERFIELD: No other questions, Your Honor.

MR. GALLO: I just have one or two questions. When did you become his sponsor? Do you remember the date?

MR. BYRNES: Oh, it was about a week after I had

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MR. BYRNES: (cont'd) met him.

MR. GALLO: Okay. So it was in January sometime?

MR. BYRNES: Yes.

MR. GALLO: Okay. And also how many meetings was he — did he attend — in the beginning, did he attend meetings regularly with you or towards the end? By the end, I mean towards the time he was getting arrested?

MR. BYRNES: It was regular, and we were at — the New Freedom

group meets twice a week, and then the group on Main Street in Stroudsburg — there's two meetings — (INAUDIBLE) group and then there's one across the street in the church.

MR. GALLO: I have no further questions.

HEARING EXAMINER ENGLE: Thank you, Mr. Byrnes, for your willingness to come and testify. You may be excused.

MR. BYRNES: Thank you.

MR. WESTERFIELD: I have no other testimony.

MR. GALLO: I have no other testimony.

HEARING EXAMINER ENGLE: I'll give you an opportunity for any closing remarks you may wish to make. Mr. Westerfield?

MR. WESTERFIELD: Your Honor, Mr. Scott did testify about the count 5b-a, the possession of the .22 Magnum which while it may technically be a violation of the condition, I would say if there's going to be a violation as de minimus a

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MR. WESTERFIELD: (cont'd) violation as there can be. The 10mm Glock handgun from the testimony of Mr. Opperlee I think falls into the same category except there was one shot rather than two

or three as in the case of the .22 Magnum. 5b-c is the five firearms and the bow located in the house, and you've heard quite a bit of testimony on that. Although they were in the house, they were wrapped and stored. Mr. Scott, from the testimony that you've heard, was not aware that those items were in the house. His stepfather had wrapped them up intending to get them removed from the house, and they were in hiding within the house. There was no ammunition in the house, and there's no allegation that Mr. Scott was in actual possession of those at any point. 5c — the charge of assaultive behavior — I've already said that in my — I've already expressed to you my feeling that those are words only, that there was no action taken on them, and they were done in the course of a heated exchange between two individuals on a job, and there was no assaultive — there was no assault, and that Mr. Scott didn't touch this individual or strike him or in any way have physical contact with him. The condition 7a and b — there's testimony on those two from two individual who are obviously biased in the sense that there's this romantic involvement with Mrs. Hahn who's the mother of one and the husband to the other, and so that testimony does come from biased sources. And Mr. Scott

has denied specifically the

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MR. WESTERFIELD: (cont'd) consumption of Southern Comfort as alleged in 7b. Even if you are to find a violation on the basis of any of this evidence, I think that in view of the de minimus nature of any violation and testimony of Mr. Scott's character from the last witness, Mr. Byrnes, I think that Mr. Scott has been back in now from February 2 and that if you were to find a violation that the time he's been back in I think is consistent with giving him a message in view of the nature of the violations that are charged.

HEARING EXAMINER ENGLE: Thank you, Mr. Westerfield. Mr. Gallo?

MR. GALLO: Yes. I'd like to address the 5b-a and b. 5b-a is possession of a .22 Magnum revolver. It's quite clear that in the conditions of parole possession is possession. It doesn't mean a difference if you possess it for one minute or two minutes. You have possession, and that's all it takes tc do injury to anybody in the community, and I would just stress that point that length of possession does not count. It's possession. As far as B, he admitted — Mr. Scott

admitted that he did fire the gun. And again I would argue that it doesn't make any difference if he fired one round or 30 rounds. The law doesn't distinguish between number of times fired or length of possession. As far as 5b-c, Mr. Scott knew the conditions of parole, and it's incumbent upon him to make sure that there are no guns in that house. He just can't live

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MR. GALLO: (cont'd) in a world of void and say, "Well, I told them there should be no guns." It is up to him, and I think he ought to accept responsibility to that. As far as the assaultive behavior, assault — in order to have assaultive behavior — talking about assaultive behavior, you do not have to strike a person. An assault can merely be pointing your hand at a person and saying something threatening. If you would look at the statement that was — Mr. Opperlee said, he says that Mr. Scott was arguing with the man. He tape two hammers to his hand which is an assaultive gesture in itself, and it's quite common in the prisons. And then I'd like to address on 7a. True, we do not have anything but Mr. Hahn's statement, and that was entered into evidence I believe as S-1. But

Mr. Hahn said it in the beginning, and although he would not testify, that everything was true and correct. And, if anything, Mr. Hahn is prejudiced towards the Commonwealth's case, not the Defendant's case. So why would he lie to this one thing? If anything, he would have not. He would have told us. He did not tell us that. On 7a-b, on or about 1/18/94, he consumed Southern Comfort. Once again, even though the witness was very reluctant to testify in this case, he admitted that all statements given to the Parole Board were true and correct. So it doesn't make any difference what motive — if he has problems with his conscience about certain things, if the Defendant so did drink alcohol, he drank alcohol. And the

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MR. GALLO: (cont'd) motive for the Defendant — the witness coming forth and testifying to this does not count if the action is true, and that would be my argument.

HEARING EXAMINER ENGLE: Thank you, Mr. Gallo.

MR. WESTERFIELD: Well, Your Honor, a couple of misstatements — clearly are misstatements on Mr. Gallo's — if I may — the — Mr. Scott admitting to firing the .22 Magnum that's the subject of 5b-a,

not the 10mm. That's the subject of 5b-b. And, secondly, there was no testimony — you have a tape recorder — about hammers being taped to hands here.

HEARING EXAMINER ENGLE: I understand that.

MR. WESTERFIELD: Mr. Gallo's referred to that a couple of times in his comments, but there was no testimony to that.

HEARING EXAMINRE ENGLE: The documents previously identified as S-1 and D-1 are going to be made part of the hearing record as well as the two-page arrest report; a copy of the February 4, 1994, warrant; the Release Order; the conditions of parole; the March 23, 1994, Notice of Charges; and Mr. Scott's waiver of panel hearing; and Mr. Westerfield's entry of appearance by counsel. I'm going to close the hearing, gentlemen, unless there's a burning issue someone has.

MR. WESTERFIELD: May I have one moment?

HEARING EXAMINER ENGLE: Off the record.

(OFF THE RECORD)

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HEARING EXAMINER ENGLE: We're back on the record.

The Hearing Examiner has agreed contrary to his better judgment to hear a closing statement from Mr. Scott. Mr. Scott?

MR. WESTERFIELD: Which will be very brief Mr. Scott's assured me.

MR. SCOTT: Yes. Your Honor, I just wanted to say that, you know, you've heard testimony about me, but I haven't really been able to say what — you know, who I am and what I've been doing since I've been out on the street. And I've been locked up — I mean, isn't that what this is all about? I was locked up for 10 years, and I got out there, and it's difficult out there, you know. I go to work every day, you know. I was not, you know, going around drinking. The friends that I hang with are all older people. They're not kids causing trouble. I don't — I'm not like the trouble out there. I go to work, you know. I get up in the morning, and it's dark, and my hands are raw from carrying block all day. You know, I can't even tie my own shoes. No one, you know, takes into consideration. They just want to say bad things about me because they felt that I shouldn't have been free to the street, and I don't understand that. I'm not trying to brag about myself, but, you know, considering what my charges were to be put

in prison, I was given an opportunity while out on the street with my girlfriend to save a woman's life from jumping off the bridge, okay, and killing herself. Now, I'm

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MR. SCOTT: (cont'd) not saying that, oh, I should be patted on the back, but that's not the kind of behavior of a bad person I don't think. I had no reason to jump out of the van and hold onto that woman until my girlfriend flagged down cars for them to go call the police. I'm just saying that's — they try to make me look — they says that, "We never wanted you out of jail. Harrisburg released you." Well, I don't know why. What did I do to anybody for them to say, "Oh, it's okay to lie. You can tell us this. You know, we never wanted Keith on the street." I don't understand why. I am not mad at the agents for what they did. I just want some understanding of why I was treated like that. What did I do to them or to anybody? You know, if anything, I saved a life. I was able — I was given — I was blessed to make amends for what I was originally put in prison for. You know, that's the way I look at it. And I don't say that to like pat myself on the back. I didn't do that. That's not what was on my mind

when I jumped out of that van — so, "Oh, look at me," you know. And I never even considered it to be that, you know, look at the opportunity God made you to make amends for what you did years ago which you — but, yeah, that's it. So I don't — you know, the parole — I earned parole in September to be released on parole from the Parole Board, and I don't feel that they made a bad judgment by giving me parole. I feel that I've been working hard on the streets to do what I'm supposed to do. I

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MR. SCOTT: (cont'd) just wanted to say, you know, that — tell you what — who I am, what I've been doing. I mean, all's you've heard is like bad things about me. I don't see where there's any truth in them. I did — you know, I'm not going to — I can't lie about shooting the gun. I did shoot the gun. I ain't going to lie about that. It wasn't nothing — I didn't — and, yes, Your Honor, I knew that I shouldn't have, you know. I didn't think that, you know, it was a bad thing to — you know, I wasn't trying to hurt no one. It was to shoot at a target, and that was it. I wasn't like carrying guns around the way it was twisted to make it sound. That's all I have to say, Your Honor.

HEARING EXAMINER ENGLE: Thank you, Mr. Scott. At this time, the Examiner will have the record show the hearing is concluded.

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CERTIFICATION

I, BETH M. HURLBERT, hereby certify that the cassette tape as provided to me was reduced to writing by me, and the transcript is a true record of the tape.

I further certify that I am neither attorney nor counsel, nor related to, or employed by any of the parties in which this action is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of January 1995.

/s/
Beth M. Hurlbert

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 060694

CLIENT NAME: KEITH M. SCOTT PAROLE NO. 4488X

INSTITUTION: STATE CORRECTIONAL INSTITUTION
DALLAS

INSTITUTION NO. BV-1645

AS RECORDED ON 052594 THE BOARD OF PROBATION AND PAROLE RENDERED THE FOLLOWING DECISION IN YOUR CASE:

RECOMMIT TO A STATE CORRECTIONAL INSTITUTION AS A TECHNICAL PAROLE VIOLATOR TO SERVE 36 MONTHS BACKTIME.

- 36 MONTHS FOR MULTIPLE TECHNICAL PAROLE VIOLATIONS.
- CONDITION #5B, COUNT 1, POSSESSION OF A 22 MAGNUM REVOLVER PISTOL.
- CONDITION #5B, COUNT 2, POSSESSION OF A 10 MILLIMETER GLOCK HANDGUN.
- CONDITION #5B, POSSESSION OF WEAPONS
- CONDITION #7, COUNT 1, CONSUMPTION OF ALCOHOL.

EVIDENCE RELIED ON: YOUR ADMISSION REGARDING CONDITION #5B, COUNTS 1 AND 3.
TESTIMONY OF MR. OPPERLEE REGARDING CONDITIONS #5B, COUNT 2 AND #5C.
TESTIMONY OF SUPERVISOR MUNDRO REGARDING CONDITION #5B, COUNT 3.
AFFIDAVIT OF ERIC HAN REGARDING CONDITIONS #5B, COUNT 1 AND CONDITION #7, COUNT 1.
REASONS: VIOLATIONS ESTABLISHED. EARLY FAILURE ON

PAROLE.

WHILE CONFINED, YOU MUST COMPLY WITH THE INSTITUTION'S PRESCRIPTIVE PROGRAM REQUIREMENTS AND HAVE NO MISCONDUCTS.
YOU MUST PARTICIPATE IN MENTAL HEALTH COUNSELING.
(CONTINUED ON PAGE 2)

PAROLE VIOLATION MAX DATE: 033103

/s/
JAMES W. RIGGS
BOARD SECRETARY

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 060694

CLIENT NAME: KEITH M. SCOTT PAROLE NO. 4488X

INSTITUTION: STATE CORRECTIONAL INSTITUTION
DALLAS

INSTITUTION NO. BV-1645

AS RECORDED ON 052594 THE BOARD OF PROBATION AND PAROLE RENDERED THE FOLLOWING DECISION IN YOUR CASE

(CONTINUED FROM PAGE 1)

REVIEW IN APRIL, 1997.

PSYCHOLOGICAL EVALUATION TO BE AVAILABLE AT TIME OF REVIEW.

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRATIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGATIONS. SEE 37 PA CODE SEC. 73. YOU HAVE THE RIGHT TO AN ATTORNEY IN THIS APPEAL AND IN ANY SUBSEQUENT APPEAL TO THE COMMONWEALTH COURT.

JUN 16 1994

(H.R. 3/30/94 - JGA 6/6/94)

PAROLE VIOLATION MAX DATE: 033103

/s/
JAMES W. RIGGS
BOARD SECRETARY

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 090694

CLIENT NAME: KEITH M. SCOTT PAROLE NO. 4488X

INSTITUTION: STATE CORRECTIONAL INSTITUTION
DALLAS

INSTITUTION NO. BV-1645

AS RECORDED ON 090694 THE BOARD OF PROBATION AND PAROLE RENDERED THE FOLLOWING DECISION IN YOUR CASE

MODIFY BOARD ACTION OF 5-25-94 BY ADDING AGGRAVATING REASONS:

MULTIPLE VIOLATIONS. YOU ARE CONSIDERED A THREAT.

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRATIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGATIONS. SEE 37 PA CODE SEC. 73. YOU HAVE THE RIGHT TO AN ATTORNEY IN THIS APPEAL AND IN ANY SUBSEQUENT APPEAL TO THE COMMONWEALTH COURT.

(JGA 9/4/94) SEP 08 1994

PAROLE VIOLATION MAX DATE: 033103

/s/
JAMES W. RIGGS
BOARD SECRETARY

November 8, 1994

George W. Westervelt, Jr., Esquire
304 Park Avenue
P.O. Box 549
Stroudsburg, PA 18360

RE: Keith M. Scott
Parole No. 4488-X

Dear Mr. Westervelt:

This is in response to your requests for administrative relief which were received by the Board on June 30, 1994 and October 5, 1994.

As a result of your requests for administrative relief, an indepth review of Mr. Scott's file was conducted and no error on behalf of the Board was found.

Accordingly, your request for administrative relief is denied.

Sincerely,

/s/
K. Scott Roy
Assistant Chief Counsel

KSR:dmb

cc: file

DATE MAILED: NOV 09 1994

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KEITH M. SCOTT, Petitioner, v. PENNSYLVANIA BOARD OF PROBATION AND PAROLE, Respondent	DOCKET NO. _____

PETITION FOR REVIEW

TO THE HONORABLE, THE JUDGES OF THE COMMONWEALTH COURT:

THE PARTIES

1. The petitioner, Keith M. Scott, is an adult individual who is currently incarcerated at the state correctional institution at Dallas.

2. Respondent, the Pennsylvania Board of Probation and Parole, is a Commonwealth agency with its central office at P.O. Box 1661, 3101 North Front Street, Harrisburg, PA.

JURISDICTION

3. Jurisdiction in the Commonwealth Court of Pennsylvania is conferred by 42 Pa. C.S.A. §763 (1981).

BACKGROUND

4. In 1993, Mr. Scott was incarcerated in the state correctional institution at Dallas. On September 1, 1993, Mr. Scott was released on parole for the remainder of a ten to 20 year sentence with a maximum release date of March 31, 2003.

5. Mr. Scott has been under the supervision of the Board since his release on parole.

6. On February 4, 1994, Mr. Scott was arrested for parole violations. The charges were based on alleged violations which purportedly occurred between September 1993 and January 18, 1994.

7. On the same date, a notice of charges and hearing was sent to Mr. Scott. A copy of the notice is attached as Exhibit A.

8. A parole violation preliminary hearing was held on February 18, 1994. At the hearing, Mr. Scott was not allowed to call witnesses and, in some instances, was precluded from asking questions or presenting other evidence.

9. A revocation hearing was held on March 30, 1994. Mr. Scott had waived a hearing before the full Board. The hearing was held before Administrative Law Judge John Engle.

10. On May 25, 1994, the Board rendered a decision

recommitting Mr. Scott to a state correctional institution as a technical parole violator to serve 36 months back time.

11. Mr. Scott filed a timely administrative appeal.

12. On September 6, 1994, while the administrative appeal was pending, the Board issued a decision modifying the "Board action of 5-25-94 by adding aggravating reasons: Multiple violations. You are considered a threat."

13. Mr. Scott filed a timely administrative appeal from the modification order.

14. On November 8, 1994, the Board, through a letter by K. Scott Roy, Assistant Chief Counsel, denied Mr. Scott's request for administrative relief.

DECISIONS SOUGHT TO BE REVIEWED

15. Mr. Scott appeals from and seeks review of the following decisions made by the Board:

(a) The May 25, 1994 decision to recommit Mr. Scott "to a state correctional institution as a technical parole violator to serve 36 months back time." A copy of this decision is attached as Exhibit B.

(b) The September 6, 1994 decision modifying "Board action of 5-25-94 by adding aggravating reasons: Multiple violations. You are considered a threat." A copy of this decision is attached as Exhibit C.

(c) The November 8, 1994 letter-decision denying the requests for administrative relief. A copy of this letter-decision is attached as Exhibit D.

REASONS FOR APPEAL AND REVIEW

17. The Board erred in determining that Mr. Scott has committed technical parole violations, revoking his parole, and recommitting him to serve back time in that:

(a) The Board's decisions were neither based on nor established by substantial evidence;

(b) Notice of hearing and charges are unconstitutionally vague. They are in violation of the mandatory established procedures that govern Mr. Scott's due process rights. With the exception of one alleged violation, none of the charges listed afforded Mr. Scott any meaningful way in which to defend

himself;

(c) The weapon's violations and the revocations bases thereon were the product of an illegal search. The search was unlawful in that parole agents misrepresented themselves when having a key to the home of Mr. and Mrs. John McDaniel (Mr. Scott's approved residence). They violated the law by unlawfully restraining Mr. Scott's girlfriend, giving her the key to Mr. and Mrs. McDaniel's home and then ordering Mr. Scott's girlfriend to open the door or she would be placed under arrest. The search of Mr. Scott's approved residence was begun and conducted without a warrant and without the knowledge of the homeowners.

(d) The decisions were based, in part, on alleged admissions made by Mr. Scott which were never made and are not established by any competent evidence in the record;

(e) The decisions were based, in part, on impermissible

and improper hearsay;

(f) With respect to condition 5(c), the evidence did not establish, by any evidentiary standard, that Mr. Scott had custody, control, or actual or constructive possession, or even knowledge of the weapons charged; the evidence did establish that the weapons were the property of John McDaniel and had been wrapped and hidden by Mr. McDaniel;

(g) The Board's decisions were erroneous as a matter of law and violated Mr. Scott's constitutional rights in that the decisions were based, in part, on findings made at Mr. Scott's preliminary hearing when:

(i) his request and right to call voluntary witnesses who were present and able to speak on his behalf to establish his innocence was denied by the hearing examiner; and

(ii) his right to speak and provide testimony at the preliminary hearing was also denied.

(h) The Board's decisions were erroneous as a matter of

law and violated Mr. Scott's constitutional rights in that they were based, in part, on an affidavit or statements made by a witness, Eric Hahn, in that:

(i) during the revocation hearing, Mr. Hahn stated that he would not testify because he had been coerced by a parole agent into making and signing statements which were not true against Mr. Scott (see affidavit of Eric Hahn attached and marked Exhibit E);

(ii) at hearing, the administrative law judge threatened and coerced Mr. Hahn by indicating that he would prosecute or prefer charges against Mr. Hahn if he did not recant his testimony that he had been coerced into making the statements and affirm the facts listed in the coerced affidavit, all of which was done over the objection of counsel for Mr. Scott;

(iii) the decisions were based, in part, on other

affidavits or statements of Mr. Hahn which were never produced, thereby preventing Mr. Scott from having a meaningful opportunity to question or cross-examine witnesses and confront the evidence against him.

(i) The Board erred in imposing 36 months back time, which exceeds the maximum presumptive recommitment range of 18 months for multiple technical parole violations, in that the decision to exceed the presumptive range is neither sufficiently justified not supported by substantial evidence.

WHEREFORE, petitioner Keith M. Scott requests that this Honorable Court review and set aside the Board's decisions, or, in the alternative, reduce the back time recommitment to the presumptive range.

/s/

GEORGE W. WESTERVELT, JR.
Attorney I.D. No. 18195
304 Park Avenue, P.O. Box 549
Stroudsburg, PA 18360
(717) 421-6100
Attorney for petitioner